

# PART 1 - ADMINISTRATION OF WORKFORCE PROGRAMS

## POLICY AND PROCEDURE MANUAL

(Revised, April 2004)

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## I. PREFACE

- A. SCOPE.** This policies and procedures manual contains the basic provisions governing administration of grants awarded by the Division of Workforce Solutions (DWS) of Wisconsin's Department of Workforce Development (DWD.) Policies in this manual have been written or adapted by DWS for application to DWS-funded grants in the state of Wisconsin. Wherever policy in this manual is different than federal legislation or U.S. Department of Labor (DOL) regulations, the latter two sources prevail. This statement is consistent with the requirement at 20 CFR 627.235(e.) This manual applies to all grantees receiving DWS funds, either directly or indirectly. All DWS grantees and their subgrantees must have local written policies that require compliance with applicable portions of the manual.
- B. REGULATORY REFERENCES.** DWS and its grantees must comply with applicable laws, rules and regulations, whether or not they are specifically incorporated into this manual. Applicable governing sources include, but are not limited to, those named in this section.

**Compliance with the following laws and regulations is mandatory:**

**1. Federal Laws and Regulations.**

- a. Age Discrimination Act, 42 USCS s. 6101 et seq; 29 USCS s. 621 note and 623.
- b. Americans with Disabilities Act of 1990. PL 101-366; 42 USC 12101.
- c. Carl D. Perkins Vocational Education Act, 20 USCS s. 2301 et seq.
- d. Civil Rights Act, 42 USCS s. 1971, 1975 a - d and 2000 a - h-6.
- e. Fair Labor Standards Act, 29 USCS s. 201 et seq.
- f. Hatch Act, 5 USCS s. 1502.
- g. 29 CFR, DOL Code of Federal Regulations
- h. Rehabilitation Act, 42 USCS s. 6001 et seq.
- i. Single Audit Act, 31 USCS s. 7501 et seq.

**2. Federal Circulars and Other Publications.**

- a. DOL Administrative Requirements:  
<http://www4.law.cornell.edu/cfr/29p95.htm#29p95s>  
(1) Code of Federal Regulations 29 (part 0 - 99), July 1, 1999.
- b. Government Auditing Standards issued by the U.S. General Accounting Office.  
<http://www.gao.gov/govaud/ybk01.htm>
- c. Office of Management and Budget (OMB) Circulars:  
<http://www.whitehouse.gov/OMB> (Grants Management section)  
(1) A-87 - Cost Principles for State and Local Governments  
(2) A-102 - (Common Rule) - Grants and Agreements for State and Local Governments  
(3) A-110 - Grants and Agreements with Nonprofit Organizations  
(4) A-122 - Cost Principles for Nonprofit Organizations  
(5) A-133 - Audits of State and Local Governments and Nonprofit Organizations
- d. Executive Orders:  
(1) 1375, Equal Employment Opportunity  
(2) 12549, Debarment and Suspension

### **3. Wisconsin Statutes.**

- a. Administrative Procedure and Review, s. 227, Stats.
- b. Assistance for Dislocated Workers, s. 101.27, Stats.
- c. Fair Employment, s. 111.31 - 111.395, Stats.
- d. Open Meetings of Governmental Bodies, s. 19.81 - 19.98, Stats.
- e. Private Interest in Public Contract Prohibited, s. 946.13, Stats.
- f. Whistle Blower Laws: Employee Protection, s. 230.80 - 230.89, Stats. and Government Employer Retaliation Prohibited, s. 895.65, Stats.
- g. Contract Compliance Law, s. 16.765, Stats.

### **4. DWS Manuals and Related Publications.**

DWS manuals and other publications as applicable.

- C. DEFINITIONS.** Unless otherwise provided for in a particular section of this manual, the following words and phrases have the meaning designated herein.

**Accrued expenditure** - charges made to a grant. Expenditures are the sum of actual cash disbursements, the amount of indirect expenses incurred, and the net increase or decrease in the amounts owed by the grantee for the goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

**Acquisition cost** - the invoice unit price of an item, net of any applicable credits or trade-in allowances, but including the costs of modifications, attachments, accessories or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

**Administration** - when used as a cost category name; all direct, joint, and indirect costs which are necessary to effectively manage a grant, including administrative costs of subgrantees, and are comprised of goods and services which do not immediately affect participants. Individual programs may have their own definition of 'Administration'.

**Alternative Dispute Resolution (ADR)** - refers to mediation for disputes and complaints whether the subject matter is alleged discrimination or a program complaint. DWS has determined that program complaints may also utilize ADR under Title 1 of the Workforce Investment Act. Under the provisions of 29 Code of Federal Regulations (CFR Part 37.76 v[c]), recipients of federal financial assistance under DOL programs must provide for alternative dispute resolution.

**Applicable credit** - those receipts or reduction-of-expenditure-type transactions which offset or reduce expense items allocable to grants as direct, joint or indirect costs. Examples of such transactions are purchase discounts, rebates or allowances, recoveries or indemnities on losses and adjustments of overpayments or erroneous charges.

**ASD** – Administrative Services Division of DWD.

**Capacity building** - the systematic improvement of job functions, skills, knowledge and expertise of the personnel who staff and administer employment and training and other closely related human service systems. Capacity building is designed to enhance the effectiveness, strengthen the caliber of customer services under federal, state and local employment and training programs, and improve coordination among them. Capacity building includes curricula development, appropriate training, technical assistance, staff development and other related activities.

**Cash contribution** - cash outlay, including money contributed to the grantee by other public agencies and institutions, private organizations and individuals.

**CEO** - Chief Elected Official.

**CFR** - the Code of Federal Regulations.

**Cognizant federal agency** - the federal agency that has been assigned responsibility by the Office of Management and Budget (OMB) for approving the indirect cost proposal or coordinating audit resolution of a specific state or local government, school or university, or other nonprofit organization.

**Commercial organization** - any business entity organized primarily for profit. This includes individuals, partnerships, corporations and other types of organizations.

**Commercially available off-the-shelf training package** - a training package sold to the general public in the course of normal business operations, at prices based on established catalog or market prices.

**Contractor** - the organization, entity, or individual that is awarded a procurement contract under the grantee's procurement standards and procedures.

**Cost** - accrued expenditure.

**Cost category** - the allowable classifications for charges to DWS grants.

**Cost objective** - a pool, center, or area established for the accumulation of costs. Such areas include organizational units, functions, objects or items of expense as well as ultimate cost objectives, including specific grants, cost categories or program activities.

**Cost plus a percentage of cost** - a cost reimbursement contract whereby the contractor is reimbursed for costs plus a fixed percentage of costs.

**CRC - Civil Rights Center**, formerly the Directorate of Civil Rights in the U.S. Department of Labor

**CWI** – Council on Workforce Investment.

**Direct cost** - any cost that can be specifically identified with one particular cost objective. Examples include payments to employees under OJT contracts, books and other teaching aids.

**DOL** - the U.S. Department of Labor.

**DWD** - the Wisconsin Department of Workforce Development.

**DWS** - the Division of Workforce Solutions within the Wisconsin DWD.

**DWS grantee** - an organization or agency receiving a grant directly from DWS.

**Equipment** - tangible personal property having a useful life of more than one year and a unit acquisition cost of \$1,000 or more. An organization may use its own definition provided that it at least includes all equipment as defined herein.

**ERD** - the Equal Rights Division within DWD.

**et seq.** - all within.

**ETA** - the Employment and Training Administration under the DOL.

**Facility** - land or buildings, including leasehold improvements, or any portion thereof, and equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the organization.

**FDIC** - the Federal Deposit Insurance Corporation.

**Fixed unit price contract** - a contract in which payment is based wholly on the delivery of services by the contractor.

**FTE** – full-time equivalent.

**Funding Period** – the period of time when grant funds are available for expenditure.

**Grantee** - an organization or agency receiving a grant, either directly from DWS or from another grantor.

**Grantor** - DWS or an organization or an agency from which the grantee receives its grant.

**Immediate family** - wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, and stepchild. For Native American grantees the definition of "immediate family" means wife, husband, son, daughter, mother, father, brother and sister.

**IN** - the Information Notice issued by DWS.

**Indirect cost** - any general management cost incurred for a purpose benefiting more than one cost objective which is not readily assignable to the cost objectives benefited without effort disproportionate to the results achieved.

**In-kind contribution** - the value of non-cash contributions provided by the grantee or third parties. In-kind contributions may be in the form of charges for real property and equipment and the value of goods and services directly benefiting and specifically identifiable to the project or program.

**ITA** – Individual Training Account.

**Joint cost** - any cost which benefits more than one cost objective and which is readily assignable to the cost objectives benefited.

**Leasehold improvement** - any capital expenditure made for additions or improvements to any tangible real property leased by the grantee.

**LEO** - local elected official.

**MIS** - management information system.

**MOU** - memorandum of understanding.

**Nontraditional employment** - occupations or fields of work where an individual from one gender comprise less than 25% of the individuals employed in such occupation or field of work as determined periodically by DOL in the Federal Register.

**Obligation** - includes the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a funding period that will require payment by the recipient or subrecipient during the same or future period. (20 CFR 626.5)

Generally, obligations should be supported by a valid purchase order, contract, subgrant, or other binding agreement, in writing, between the parties. For purposes of reallocation and reallocation, obligations also include accrued expenditures. For entities which run entire programs in-house, obligations are the total of accrued expenditures and do not include cost items such as projected staff cost. Obligations do not include unexecuted procurements or budgeted items.

**OIG** - the Office of Inspector General of the U.S. Department of Labor.

**OJT** - on-the-job training.

**OMB** - the U.S. Office of Management and Budget.

**Personal property** - property of any kind except real property, including both supplies and equipment. Personal property may be either tangible (having physical existence) or intangible (having no physical existence such as a patent or copyright.)

**P.L.** - Public Law.

**Prior approval** - securing advance written authorization to incur costs designated as requiring prior approval.

**Program income** - the net income earned from DWS-funded activities.

**Project cost** - all allowable costs incurred by a grantee and the value of the in-kind contribution made by the grantee or third parties in accomplishing the objectives of the grant during the project or program period.

**PY or Program Year** - the funding year of a grant. Most DWS grants have a program year effective July 1 through June 30.

**Real property** - land, land improvements, buildings and leasehold improvements but not including movable equipment.

**RFP** - request for proposals.

**ss.** - Wisconsin State Statute section.

**Stand-in cost** - costs paid from non-federal sources that a grantee proposes to substitute for federal costs that have been disallowed as the result of an audit or other review. Stand-in costs must have been reported by the grantee as uncharged program costs under the same title and in the same program year in which the disallowed costs were incurred.

**Stat.** - statute.

**Subgrantee** - an organization or agency receiving a grant of DWS funds from any grantee.

**Supplies** - all tangible personal property except equipment.

**TANF** - Temporary Assistance for Needy Families.

**Technical Assistance** - a facet of capacity building which includes information sharing, dissemination and training on program models and job functions, peer-to-peer networking and problem solving; guides; and interactive communication technologies.

**TEGL** - the Training and Employment Guidance Letter issued by the DOL.

**TEIN** - the Training and Employment Information Notice issued by the DOL.

**UI** - unemployment insurance.

**Unit acquisition cost** - the net invoice unit price, including the cost of modifications, attachments, accessories or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired.

**U.S.** - the United States.

**USCS** - the U.S. Code Service.

**WDA** -- Workforce Development Area - a geographic area designated by the Governor for administering DWS-funded programs.

**WDB** - Workforce Development Board.

**WIA** – Workforce Investment Act.

**WIASRD** - Workforce Investment Act Standard Record Data -- reporting requirements issued by DOL.

**WIMS** - the Wisconsin Information Management System for recording participant data that is administered by DWS.

**WTCS** - Wisconsin Technical College System.

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**II. ASSURANCES AND CERTIFICATIONS.**

This chapter contains the assurances and certifications for all grants awarded by the Division of Workforce Solutions of Wisconsin's Department of Workforce Development. All DWS grantees and subgrantees must have local written policies that require compliance with applicable portions of this chapter.

**A. SIGNATORY AUTHORITY.** The grantee assures that it possesses the following legal authority to participate in a grant:

1. **Signatory Official.** The grantee assures that the designated signatory official holds the legal authority to accept these funds.
2. **Grantee Authority.** The grantee assures that it possesses the legal authority to participate in this grant. A resolution, motion or similar action has been duly adopted as an official act of the grantee's governing body authorizing participation in DWS issued grants. The grantee is required to direct and authorize the person identified, as the grantee's official representative to act in connection with the grant and to provide such additional information as may be necessary.

**B. COMPLIANCE STATEMENT.** In carrying out the terms of its grant the grantee assures that it will comply with any and all applicable laws, rules and regulations and with the provisions of its grant document. The grantee assures compliance with the following specific requirements:

1. **Wisconsin Workforce Investment Act State Plan.** Grantee programs must be responsive to the applicable requirements of any State Plans related to the grant.
2. **DWS Policies.** The grantee must comply with applicable DWS Policies and Procedures Manuals.
3. **Policy Distribution.** The DWS grantee must designate certain individuals to obtain applicable manuals. This manual is also available on the DWD program website.

**C. NONDISCRIMINATION AND EQUAL OPPORTUNITY REQUIREMENTS.** The grantee assures that it will avoid discrimination and follow equal employment opportunity practices in the administration and delivery of services and benefits to eligible participants and applicants of DWS-funded programs and that it will comply with the following provisions of nondiscrimination and equal employment opportunity:

1. **Applicable Laws and Other Requirements.** The grantee must comply with the Civil Rights Act of 1964 as amended, Titles VI, VII and the Education Amendments to Title IX; the Rehabilitation Act of 1973 as amended, ss. 503 and 504; the Age Discrimination Act of 1975 as amended; the Americans with Disabilities Act of 1990, as amended; the Vietnam Veterans Readjustment Assistance Act of 1974, the Workforce Investment Act Sections 181 and 188; the U.S. Executive Order 11375; the Wisconsin Fair Employment Act s. 111.31-111.395, Stats.; Wisconsin Contract Compliance Law, s. 16.765, Stats.; the Wisconsin Administrative Code DWD 816.11; this section of the Workforce Programs Guide and all other applicable laws. Such requirements include but are not limited to the following:

- a. **Prohibition of Discrimination.** No participant, staff person or administrator may be discriminated against, denied benefits, denied employment, or excluded from participation in connection with any DWS-funded program on the basis of race, color, religion, sex, national origin (ethnic status), age, disability, marital status, offender status, sexual orientation, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in a DWS financially assisted program or activity, arrest or conviction record unless specifically exempt by grant regulations, or refusal to submit to sexual contact or sexual intercourse.
  - b. **Citizenship/Authorized Alien Status Requirements for Program Participation.** Participation in DWS programs shall be open to citizens and nationals of the U.S., lawfully admitted permanent resident aliens, lawfully admitted refugees and parolees, and other individuals authorized by the U.S. Attorney General to work in the U.S.
  - c. **Encouragement of Nontraditional Employment.** The grantee must make appropriate efforts to overcome sex stereotyping, including the encouragement of nontraditional employment for DWS-funded staff and participants.
  - d. **Limited English Proficiency Populations.** The grantee must identify limited English proficiency populations in areas where it operates DWS-funded programs, ensure that information about its programs is available in a manner understood by the populations identified, and ensure that no individual is denied DWS-funded services because of an inability to communicate in English.
  - e. **Reasonable Accommodations.** The grantee must ensure that reasonable accommodations are made to the known physical or mental limitations of an otherwise eligible applicant, employee or participant unless it can be demonstrated that the accommodations would impose an undue hardship on the operation of the program.
  - f. **Additional Assurances.** The grantee must adhere to all other assurances as specified in the specific grant regulations and grant agreement.
2. **Assurance of Subgrantee Notification.** The grantee assures that each organization to which it subgrants funds is notified of the terms and conditions of applicable nondiscrimination and equal employment opportunity provisions, including potential consequences for noncompliance, and agrees to abide by them as a condition of receiving grant funds.
- a. **Subgrant Agreement.** The grantee of DWS funds must state in each subgrant agreement that failure to comply with applicable nondiscrimination and equal opportunity provisions will require corrective action to eliminate violations within a prescribed timeframe or otherwise incur specified sanctions.
  - b. **Plan Requirements.** Each DWS grantee shall submit to the DWS in its grant plans a copy of the format to be used to notify subgrantees of the potential consequences of failing to comply with nondiscrimination and equal opportunity requirements.

- c. **Wisconsin Contract Compliance Law, s. 16.765, Stats.** Each workforce development area (WDA) administrative entity shall submit a written affirmative action plan within fifteen (15) working days after the date the contract/grant is awarded. The affirmative action plan shall meet the minimum requirements specified in section 50.05 of the Wisconsin Administrative Code (Adm. 50.05 Affirmative Action Plan.) <http://www.legis.state.wi.us/rsb/code/adm/adm050.pdf>
3. **New Participant and Employee Orientation.** Any grantee who either operates or subcontracts DWS funded programs for participants shall, during each presentation to orient new participants or new employees to its DWS funded program or activity, include a discussion of participants' and/or employees' rights under the nondiscrimination and equal opportunity provisions of applicable grants and 29 CFR, Part 37 including the right to file a complaint of discrimination with the Division or the Director of the Civil Rights Center of the Department of Labor (CRC/DOL.)
4. **Equal Opportunity Public Information Statements.** In recruitment brochures and other materials ordinarily distributed to the public, which describe the DWS funded program or requirements for participation, the statement shall appear; "As a condition to the award of financial assistance from the Department of Labor under the applicable program, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws: Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age disability, political affiliation or belief, and against beneficiaries on the basis of citizenship, status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I - financially assisted program or activity; Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; The Age Discrimination Act of 1975, as amended; Title IX of the Education Amendments, as amended. The grant applicant also assures it will comply with 29 CFR, part 37, and all other regulations implementing the laws listed above. Where such materials indicate that the grantee may be reached by telephone, the materials shall also state the telephone number of the Telephonic Device for the Deaf (TDD) or relay service used by the grantee."
- D. **ADEQUATE AND DOCUMENTED SYSTEMS.** The grantee assures that it has adequate and documented systems for administrative, personnel, financial and program management. The systems must include policies, procedures and controls necessary to ensure the effective and efficient use of funds for delivery of program services.
- E. **PROHIBITION OF FRAUD AND ABUSE.** In carrying out DWS programs, the grantee assures that it is aware of and shall comply with the prohibition of fraud and abuse described as follows:
1. **Conflict of Interest.** A conflict of interest may exist when a person has a direct personal, organizational or financial relationship to an organization, and if that person is in a position to influence, or appears to influence the actions of another organization for the benefit of themselves or an organization with which they have such relationship.

The grantee, each subgrantee, and related local boards must comply with the following provisions regarding conflict of interest.

- a. **Conflict of Interest Requirements Applicable to Local Boards and to each grantee.** The local boards and each grantee shall develop written policies and procedures governing conflict of interest that apply to board members, grantees and staff.

The policies and procedures shall apply to the local board and its by-laws, related agreements and personnel policies.

- (1) **Written Policies.** The local board and each grantee must have written policies that conform to this Conflict of Interest Policy.
- (2) **Written Code of Conduct.** The local board and each grantee must maintain a written code of conduct that will govern the performance of its officers, employees or agents involved in any official actions within any grant process. This includes contracting or procuring supplies, equipment or services with DWS funds. The section of the code dealing with Conflict of Interest shall include, but not be limited to, the following:
  - (a) **Maintain the Public Trust.** The code of conduct shall assign to the local board, its employees and grantees the responsibility to maintain the public trust for the use of federal and state funds for the purpose of carrying out program requirements, including the responsibility to maintain the reputation and integrity of the program.
  - (b) **Conform to Requirements.** The code of conduct shall conform to state regulations applicable to public contracts and all other requirements in this subsection.
  - (c) **Specific Issues or Situations.** The code of conduct shall include but not be limited to the following potential issues or situations.
    - (i) Members voting on or being involved in discussions on proposals or agreements for organizations that they or immediate family members have ownership in or are employed.
    - (ii) Members voting on or being involved in discussions on proposals or agreements for organizations for which they maintain membership on a governing board, interlocking directorate or other relationship.
    - (iii) Local board members or employees shall be prohibited from using their positions for a purpose that gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family, business, or other relationships.
- (3) **Responsibility.** Each member of the local board is responsible for ensuring the grantee, its staff, and applicants for grants maintain the reputation and integrity of the programs. Conflict of interest issues need to be addressed as they arise and duly recorded in minutes of meetings.
- (4) **Addressing “Appearance.”** The best method of addressing “appearance” concerns is full and open public discussion and resolution, duly recorded in minutes of meetings.
- (5) **Provisions for Public Officers and Employees.** Procedures must be developed to ensure those provisions of s. 946.13, Stats. and any valid Attorney General's opinion governing conflict of interest for public officers and employees are not violated. Applicable Attorney General opinions and s. 946.13 Stats. provide the following:

- (a) Any public officer or public employee is guilty of a Class E felony when in the capacity as such officer or employee, participates in the making of a contract to which there is a private financial interest, direct or indirect, or performs in regard to that contract some function requiring the exercise of discretion.
  - (b) Subsection (1) of s. 946.13 does not apply to the following:
    - (i) Contracts in which any single public officer or employee is privately interested, which do not involve receipts and disbursements by the State or its political subdivision aggregating more than \$7,500 in any year (s. 946.13[2][a]).
    - (ii) Contracts involving the deposit of public funds in public depositories.
  - (c) A contract entered into in violation of s. 946.13(3) is void and the State or the political subdivision in whose behalf the contract was made incurs no liability thereon.
  - (d) In s. 946.13(4), "contract" includes a conveyance.
  - (e) Subdivision (a) does not apply to a public officer or public employee by reason of his/her holding not more than 2% of the outstanding capital stock of a corporate body involved in such contract.
- (6) **Resolution of Allegations.** A detailed written process must establish the procedure for handling conflicts and potential conflicts of interest when they arise. The procedures shall include, but not be limited to, the following in a timely manner:
- (a) Immediate and priority attention;
  - (b) Open and full examination of the allegations;
  - (c) Prompt and timely decisions;
  - (d) Full disclosure of the resolution.
- b. Organizational and Personal Conflict of Interest.** The local board and personnel of each grantee must avoid organizational and personal conflict of interest and the appearance of conflict of interest to the extent possible.
- (1) **Organizational Conflicts of Interest.**
- (a) A board member serves on the board of a grant applicant.
  - (b) A board member assists in preparing a proposal for an agency in which s/he has an interest and which will be applying for funds.
  - (c) A board member has personnel responsibilities for a local business that is receiving OJT contracts.
  - (d) A board member serves on the board of a grant applicant.
- (2) **Personal Conflicts of Interest.**
- (a) A board member's spouse or other family member serves as an officer or on the board of a grant applicant.
  - (b) A board member has a financial investment in a business receiving funds from the grantee.

- c. **Voting Conflict of Interest.** No member of any local board, advisory council, or committee thereof shall discuss or cast a vote on the provision of services by that member (or any organization of which that member is an owner, manager, employee, or agent) or vote on any matter which would provide direct financial benefit to that member or any organization of which that member is an owner, manager, employee, or agent. The board, advisory council or committee may require members to leave the room during discussions and voting on issues with which they have a conflict of interest. This requirement does not preclude board members or their businesses from participating in training contracts.
  - d. **Conflict of Interest Involving the Prospect of Private Gain.** The grantee shall prohibit its employees from using their positions for a purpose that is or that gives the appearance of being motivated by a desire for private gain for themselves or those with whom they have family, business or other relationships.
  - e. **Conflict of Interest of Public Officers or Employees.** The grantee shall comply with s. 946.13, Stats. under Wisconsin's criminal statutes and any valid Attorney General's opinion governing conflict of interest for public officers or employees. Any contract entered into in violation of federal or state statutes is void, and the state or the political subdivision in whose behalf the contract was made incurs no liability thereon.
  - f. **Disclosure.** Each board shall have on file a disclosure form that is signed by each board member and staff, a representative for the Administrative Entity and each grantee. The disclosure form shall be reviewed and updated at least annually and shall be reviewed for each grantee at the time of application. Affiliations that become a conflict of interest but were not identified in the disclosure statement shall be reported immediately to the grantee. The disclosure statement must include, but not be limited to, the organizational and fiduciary affiliations of the individual or the individual's immediate family that may present a potential conflict of interest for that individual. DWS will issue sample disclosure statement formats upon request.
  - g. **Technical Assistance.** DWS may be contacted for advice when questions or allegations occur that are not covered by policy.
- 2. **Kickbacks.** No officer, employee, or agent of the grantee may solicit or accept gratuities, favors, or anything of monetary value from any person in return for preferential treatment.
  - 3. **Commingling of Funds.** The grantee must maintain accounting records that adequately identify separate deposits and expenditures for each DWS grant.
  - 4. **Charging of Fees.** The grantee must ensure that no individual is charged a fee for being referred to training or placed in DWS-funded employment.
  - 5. **Nepotism.**
    - a. **Hiring, Promotions, and Salaries.** No board member, LEO, or employee of the grantee may effectively recommend or decide to hire, promote, or establish the salary of another person when the person affected is a member of his or her immediate family.
    - b. **Supervision and Management.** No board member, LEO, or employee of the grantee may give preferential treatment in the supervision or management of another employee who is a member of his or her immediate family.

6. **Child Labor.** All grantees must comply with applicable federal, state and local child labor laws.
7. **Political Patronage.**
  - a. **Rewards.** The grantee may not select, reject, or promote a participant or staff person based on the participant's or staff person's political affiliation or beliefs; as a reward for political services; or as a form of political patronage.
  - b. **Referrals.** The grantee may not refer participants to DWS programs nor select subgrantees based on political patronage or affiliation.
8. **Political Activities.** DWS-funded programs may not involve partisan or nonpartisan political activities.
  - a. **Participation.** No program participant may engage in partisan or nonpartisan political activities during the time for which the participant activity is funded with DWS funds.
  - b. **Representation.** No participant may engage in either partisan or nonpartisan political activities in which they represent themselves as a spokesperson for the DWS-funded program.
  - c. **Location of Employment or Outstation.** No participant may be employed or located in any of the following:
    - (1) In the office of a member of congress, a state or local legislator, or any staff of a legislative committee;
    - (2) In the immediate offices of any chief elected executive official of a state or a unit of general local government unless it is clearly documented that the position is entirely nonpolitical;
    - (3) In positions involving political activities in the offices of other elected executive officials. Nonpolitical positions in such offices are permissible with documentation as to the nonpolitical nature of the position.
  - d. **Hatch Act.** The provisions of the Hatch Act, 5 USCS s. 1502 apply to:
    - (1) All individuals whose employment is DWS-funded and who work for the state, a state or local agency (such as a county) or an Administrative Entity, whether that entity is a county, a local board or a nonprofit agency.
    - (2) All individuals whose employment is DWS-funded and who work in a non governmental agency required to comply with the Hatch Act because of provisions governing other federal funding that they receive. Some federal funding sources specify that grant recipients are considered "local agencies" for purposes of 5 USC, s. 1502.
9. **Sectarian Activities.** DWS funds may not be used to attempt to support either religious or anti-religious activities. Grants that are issued to 'faith based' organizations must document the nonsectarian nature of the activity.
10. **Unionization Activities/Work Stoppages.** The grantee shall comply with the provisions of union activities described as follows:
  - a. **Promotion or Opposition to Union Activities.** DWS funds may not be used in any way to promote or oppose unionization.

- b. **Union Membership.** No individual may be required to join a union as a condition for enrollment in training unless such training involves individuals employed under a collective bargaining agreement containing union security provisions.
  - c. **Positions Affected by a Labor Dispute.** No participant shall be placed in or remain working in any position affected by a labor dispute involving a work stoppage or strike.
  - d. **Union Dues or Services Fees.** Employers are not precluded from deducting union dues or service fees under applicable collective bargaining agreements or state laws.
  - e. **Existing Contracts or Collective Bargaining Agreements.** No DWS-funded program may impair existing contracts for services or collective bargaining agreements. An exception to this is that any DWS grant that would be inconsistent with the terms of a collective bargaining agreement can only be undertaken with the written concurrence of the labor organization and employer concerned.
  - f. **Consultation with Labor Organizations.** Services to a substantial number of members of labor organizations are to be provided only after full consultation with the labor organization involved.
- 11. Maintenance of Effort.** The grantee must comply with the maintenance of effort provisions described as follows:
- a. **Displacements.** DWS programs must comply with the following.
    - (1) DWS programs must result in an increase in employment and training opportunities over those that would otherwise be available in the area.
    - (2) DWS programs may not result in the total or partial displacement of currently employed workers or reduction in hours of non-overtime work, wages, or employment benefits.
    - (3) DWS programs may not impair existing contracts or grants for services nor substitute federal funds to pay for services that would have been funded by other sources.
  - b. **Supplanting Funds.** DWS grants must be used for activities that are not otherwise available in the area.
  - c. **Hiring Freezes.** DWS-funded participants may not be hired into or remain working in any position when the same or a substantially equivalent position is vacant due to a hiring freeze.
  - d. **Layoffs and Recalls.** DWS-funded participants may not be hired into or remain working in any position when one of the following applies to any person who is not DWS-funded:
    - (1) A person is on layoff from the same or a substantially equivalent job in the same organizational unit of the same employer; or
    - (2) A person is on layoff or has been bumped and has recall or bumping rights to that position according to a personnel code or practice or a collective bargaining agreement of the same employer.



- (3) For purposes of this paragraph, a layoff is in effect until the expiration of the period required by a recall list, or if no recall list or reemployment rights exist, for a period of one year from the last layoff or until the next operating year of the affected organizational unit in the company or department, which ever occurs later.

- e. **Promotions.** No jobs shall be created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals.

**12. Criminal Provisions.** Any officer, director, agent, or employee of any organization receiving DWS funds who commits any of the following acts shall be prosecuted to the full extent of the law:

- a. **Enrollment of Ineligibles.** Knowingly hiring or enrolling an ineligible individual;
- b. **Misapplication or Theft of Funds.** Embezzling, willfully misapplying, stealing, or obtaining by fraud any money, funds, assets, or property that is funded by a DWS grant;
- c. **Inducements or Threats.** Inducing another person to give up money or something of value to a person or grantee agency by threat of dismissal or refusal to renew an employment grant in connection with DWS-funded grants;
- d. **Obstructing or Impeding Investigations or Inquiries.** Willfully obstructing or impeding (or attempting to obstruct or impede) an investigation or inquiry into activities relating to DWS-funded grants when those activities are alleged to be criminal or a violation of the regulations in this document;
- e. **Promising Special Consideration.** Directly or indirectly promising any employment, position, compensation, contract, appointment, or other benefit involving DWS funds as special consideration, favor, or reward for any political activity; or
- f. **Coercion.** Coercing another individual into making a political contribution by denying or threatening to deny employment or benefits under a DWS-funded grant.

**13. Responsibility for Preventing Fraud and Abuse.** The grantee shall:

- a. **Establish and Utilize Management Procedures.** Each grantee shall establish and use internal program and fiscal management procedures sufficient to prevent fraud and program abuse.
- b. **Maintain Sufficient and Adequate Records.** Each grantee shall ensure that sufficient, auditable and otherwise adequate documentation is maintained which support the expenditure of all DWS funds. Such records shall be sufficient to allow the DWS, the State, or the federal government to audit and monitor the programs.
- c. **Establish Procedures and Conduct Monitoring.** The grantee shall establish monitoring procedures and conduct annual on-site monitoring in compliance with requirements for monitoring identified in this Guide.
- d. **Report Allegations or Complaints/Grievances.** Grantees that become aware of any allegation or complaint/grievance about possible fraud, malfeasance, or nonfeasance, misapplication of funds, gross mismanagement, and employee or participant misconduct involving DWS grants or operations should report such incidents to DWS within one day in accordance with the appropriate procedures.

**14. Debarment and Suspension.** Applicants for non-mandatory awards of DWS funds shall submit a completed certification regarding debarment and suspension with their proposal. Debarment or suspension by one federal agency results in suspension or being barred from doing business with all federal agencies. Organizations making an award may rely on current certification statements used for Public Service Employment submitted to them with funding proposals. The form supplied by DOL for use by grantees applying for funding that (1) is awarded at or below the state level and (2) is non-mandatory (not formula allocated) has been reprinted by the DWS for grantee use and is available upon request. (Executive Order 12549, 12689; 29 CFR Part 98; 20 CFR Part 627.424; DOL. TEIN No. 21-88.)

- a. Procurement Threshold.** Procurement of goods or services of less than \$25,000 is exempt from the certification requirement unless the transaction is for procurement of audit, investigative, or legal services.
- b. Certification.** A certification may be relied on when received until the end of the period covered by the agreement with the successful proposer unless the awarding agency becomes aware of debarment or suspension by a federal agency. Written language in the agreement shall terminate the funding in the case of subsequent debarment or suspension during the life of the agreement.

**15. Lobbying.** Recipients of DWS grants or contracts in excess of \$100,000 shall file a certification form regarding lobbying requirements with the awarding organization. Grants or contracts in excess of \$100,000 will be referred to as "covered actions" in the remainder of this subsection. The proper certification form should be completed for submission with proposals. Use of appropriated federal funds for lobbying the executive or legislative branches of the federal government in connection with a specific contract or grant is prohibited. DOL Standard Form LLL (disclosure report) shall also be filed with the awarding organization if the proposer engages in lobbying activity utilizing other than federally appropriated funds.

**a. Record Management**

- (1) **Certifications.** Certifications shall be retained by the awarding organization.
- (2) **Disclosure Reports.** Disclosure reports shall be forwarded to the DWS and ultimately to the appropriate ETA Grant Officer.

**b. Filing Frequency.**

- (1) **Proposals, New Grants, New Contracts.** A current certification and disclosure report (where applicable) shall be filed with each proposal, grant, or contract which is submitted for a covered action.
- (2) **Disclosure Reports.** Disclosure reports for covered actions shall be amended and submitted to the awarding organization within the Program Year quarter if one of the following occurs:
  - (a) a cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action (29 CFR 93.110(c)(1));
  - (b) a change in the person(s) or individual(s) influencing or attempting to influence a covered federal action (29 CFR 93.110(c)(2);

- (c) a change in the officer(s), employee(s), or members contacted to influence or attempt to influence a covered federal action (29 CFR 93.110(2)(3); or
  - (d) any change in the content of the disclosure report which is not covered by (a), (b), or (c) above.
- (3) **Program Year Change.** A new certification and disclosure report (where applicable) shall be filed with the awarding organization when a Program Year change occurs during the life of a covered grant.

The required forms shall be filed with the awarding organization before July 1 of each year to avoid a DOL funding end. The DWS is the awarding organization for local boards and other direct grantees.

## F. INSURANCE REQUIREMENTS.

1. **Liability Insurance.** The DOL, the State, or the DWS assumes any liability with respect to bodily injury, illness, or any other damages or losses, or with respect to any claims arising out of any activities undertaken under a DWS grant whether concerning persons or property in the grantee's organization or third parties. The grantee must insure or otherwise protect itself with regard to activities under the grant or agreement. Examples of protective insurance include the following:
  - a. **Directors' and Officers' Legal Liability Insurance.** Directors' and officers' legal liability insurance provides protection against expenses such as legal fees, court costs, and judgments arising from suits relating to discrimination, wrongful dismissal of employees, acts beyond granted authority, failure to verify facts in official documents, insufficient administration resulting in loss of funds, or false and misleading reports. It generally applies to civil rather than criminal litigation. Directors' and officers' legal liability is an allowable DWS division cost chargeable to the administration cost category.
  - b. **General Liability Insurance.** General liability insurance provides protection against losses arising from unintentional bodily injury or property damage. Coverage may include personal injury, automobile, fire and others. General liability is an allowable DWS expense charged to the administration cost category.
2. **Bonding.** The grantee must comply with the bonding provisions described as follows:
  - a. **Fidelity Bonding.** Fidelity bonding is an allowable DWS cost chargeable to the administration cost category. The fidelity bond protects an organization against loss caused by dishonesty by individuals who are part of the organization. It covers forging or alteration of checks, counterfeit currency, embezzlement, and theft in transition and safe deposits. Coverage may be for all members of the organization or it may be limited to certain individuals. Federally funded programs generally require bonding for individuals who are directly involved with authorizing or processing financial transactions.
  - b. **Bonding Coverage.** The grantee must provide bonding coverage for every officer, director, agent, or employee authorized to receive or deposit DWS funds in program accounts or to issue financial documents, checks, or other instruments of payment for grant costs. The amount of bonding shall be the lower of either (1) the amount of \$100,000, or (2) the amount of the highest monthly expenditure planned for the present grant year.

- c. **Bonding Cancellation.** The grantee must immediately notify the DWS if the bond is cancelled or reduced.
3. **Worker's Compensation.** To the extent that Wisconsin's worker's compensation law is applicable, worker's compensation benefits in accordance with such law shall be available with respect to injuries suffered by participants. Grantees must secure insurance coverage for injuries suffered by participants who are not covered by existing worker's compensation. Contributions to a reserve for a self-insurance program are allowable to the extent that the type and extent of coverage and the rates and premiums would have been allowed had insurance been purchased to cover the risks.
4. **Unemployment Insurance (UI).** All DWS grantees, program operators, and work sites shall comply with requirements regarding UI coverage for participants in subsidized employment unless the exemption referenced elsewhere in this subsection applies. (Wisconsin Statutes Chapter 108.) The UI Division of DWD has determined that the exemption at s. 108.02(15), Stats. may be applied to DWS-funded participants enrolled in work experience and summer employment except "Tryout Employment" (UCD 1800-85-3, Supplement 1.) Participant wages in exempt programs are not subject to UI taxes and employers are not liable for claims filed that are based on employment in an exempt program.
- a. **Employer Designation.** Under normal circumstances, the work site will be the employer for UI purposes, without regard to the organization that selected the participant or provides payments to the participant. Wisconsin s. 108.02(12), Stat. defines "employee" as "any individual who is or has been performing services for an employing unit, in an employment whether or not the individual is paid directly by such employing unit."
- b. **Responsibility for Payment.** The employer (usually the work site) is responsible for making all UI payments, either UI taxes, where the employer is using the tax basis, or the direct UI reimbursement, where the employer is using the reimbursement basis.
- c. **Employment Record.** Wisconsin s. 108.21, Stats. requires each employer of one or more persons in Wisconsin, whether subject to Chapter 108 or not, to maintain an employment record for each individual employed. The employment record is to include the employee name, address, social security number, and such other information that will allow the department to determine the weekly wages paid to the employee. The required information should be maintained by the employer (usually the work site) and, by law, must be available for inspection by DWD upon request. To the extent fringe benefits constitute taxable wages, such information is also subject to the record keeping requirements of s. 108.21. Where the employer does not pay the wages, the employer's ability to comply with the statutory record keeping requirements will depend upon timely and accurate reporting of wages paid by the grantee or other payroll agent to the work site employer.
- d. **Exemptions.** A number of employment situations described in the UI law are exempt from UI coverage, such as employment of work-study students by a school (s. 108.02(15)(i), Stats.) Employment situations such as these, which are otherwise exempt from UI coverage, do not become covered employment by virtue of their being subsidized; these situations are still exempt.

In addition, some statutory nonprofit organizations are not subject to Chapter 108 because they have fewer than four employees on a day in 20 different weeks of either the current or preceding year. Where this criterion is met based on employment of non-DWS-funded employees, DWS-funded participants cannot be used in a count of employees to establish subjectivity of such an employer.

- e. **Financing.** Two methods of financing UI benefit costs for nonprofit organizations and governmental units exist:
  - (1) Tax Financing, where the employer pays a quarterly tax based on a percentage of the taxable payroll; the percentage to be paid is based on the employer's "experience rating"; and
  - (2) Reimbursable Financing, where the employer pays no tax but is billed directly for benefits paid to claimants who were former employees, at 100% of the cost of the benefits.

The Tax Financing method is the only one available to the private for-profit sector.

- f. **Government Units.** Section 108.15 of the UI law describes the requirements for a government unit to elect a tax basis instead of a reimbursement basis; Section 108.151 provides for election of reimbursable basis for nonprofit employers. Neither section includes any provisions for a partial election.
- g. **Eligibility.** Eligibility for benefits is a complex issue. It is described in the UI law at 108.04, and further detailed in DWD ss. 126, 127, 128, and 129 of the Wisconsin Administrative Code. Although a participant may be ineligible for benefits based solely on their federally subsidized employment, they may be eligible based upon a combination of employment, which includes the federally subsidized position.
- h. **Benefit Rights.** DWD s. 120.01 of the Wisconsin Administrative Code describes requirements for all employers to post notice of benefit rights in the work place. In addition to these requirements, DWS funded participants must be informed of all benefits to be provided on the job during their orientation at time of enrollment and/or placement on a worksite.
- i. **Allowable DWS Costs.** All the costs related to providing UI coverage to DWS participants are allowable.
  - (1) Where an employer is using a tax basis for coverage, the quarterly payment on behalf of DWS-funded participants is an allowable cost. This amount can be determined by multiplying the employer's tax rate by the wages paid to participants.
  - (2) Where an employer is using a reimbursement basis, the amount paid into the fund on behalf of a participant who collects benefits is an allowable cost. This amount is usually charged to the period in which payment is actually made. For funds to be available for this cost when the participant was in a grant that has been closed, the potential UI liability must have been identified in the closeout package, and there must be unspent funds in the grant (and funds available to the DWS) to cover the expense. When the participant was in a grant that has not been closed, the grantee has the choice of whether or not to cover the expense.

- j. **Tax Financing.** The process for grantees using the tax method for financing UI depends on the relationship between the payroll agent and the employer. The payroll agent may or may not be the employer.
- (1) Where the employer is NOT the payroll agent, the following process should be used:
    - (a) The employer must report all hours worked by participants to the payroll agent.
    - (b) The payroll agent must report to the employer all wages paid to participants.
    - (c) The employer must determine the amount of UI liability to be paid to DWD's UI Division and pay that amount directly to DWD's UI Division.
    - (d) The employer may submit a claim to the payroll agent for reimbursement of UI taxes paid.
    - (e) The payroll agent may reimburse the employer for UI taxes paid.
    - (f) All worksite agreements must specify who has UI liability and the procedures, if any, for reimbursements from DWS funds.
  - (2) Where the employer and payroll agent are one and the same, the payroll agent must report and pay all UI taxes to DWD's UI Division at the appropriate tax rate for the payroll agent's organization.
- k. **Reimbursement Financing.** The process for grantees using the reimbursement method for financing UI follows. Only nonprofit agencies and governmental units may use the reimbursement method for financing UI benefits. Agencies must guarantee payment of required reimbursements pursuant to Wisconsin s. 108.151(4), Stats. As with those on the tax-based system, the employer is liable for financing of UI benefit reimbursements.
- (1) The following process should be followed where the payroll agent is NOT the employer:
    - (a) Whenever a former participant has a claim against an employer using the reimbursement method, the employer will be notified by DWD. This notification will include the maximum payment amount that is possible for the claim in question.
    - (b) The employer should notify the payroll agent (and, depending upon the agreements reached, the WDA or other grantee) of the claim at that time.
    - (c) DWD will send, to the employer, periodic statements of the actual benefit check(s) written to the former participant. This is the amount that is an allowable charge to DWS grants, and the amount that may be reported to the payroll agent for reimbursement.
    - (d) The payroll agent may reimburse the employer.
    - (e) In addition, DWD will send monthly notices to employers notifying them of any payments due. The employer will be responsible for making the proper payments to DWD.
  - (2) Where the payroll agent and the employer are the same, the employer/payroll agent is responsible for making reimbursements to DWD.

- (3) In cases where UI benefit payments continue past the end date of a grant, the following requirements must be met:
  - (a) The program operator must establish a system to ensure all UI liabilities incurred by employers are paid in accordance with UI law, even if such liability continues past the end of the grant period.
  - (b) Program operators may not establish a contingency fund to meet UI reimbursement requirements. Pursuant to Wisconsin s. 108.151(5)d, Stats., the employer may at any time make other payments to be credited into its reimbursement account, in anticipation of future benefits, but such payments would not be allowable charges to DWS grants.
  - (c) UI liabilities incurred, which continue past the closeout date of a grant with the DWS, may be paid if the following conditions are met:
    - (i) The grant closeout package has been appropriately filed with the DWS.
    - (ii) Costs for the potential liability have been identified in the closeout package.
    - (iii) There are unspent funds in the grant.
    - (iv) The DWS has funds available to pay the costs.

**G. LIABILITY.** The grantee assures that it shall comply with these provisions:

1. **Claims Against DWS, Other State or Federal Agencies.** The grantee will hold the DWS, the state of Wisconsin, and the federal government harmless against any claims, except that claims between a grantee and state agency subrecipient are not precluded by this document. This requirement does not apply to agreements between the DWS and other state of Wisconsin agencies.
2. **Liability for Disallowed Costs.** The grantee will assume liability for any costs disallowed by the DWS or DOL because of violations of provisions in applicable laws, regulations, and rules promulgated by the federal government, the State of Wisconsin and the DWS, this manual, or the individual contract. The DWS reserves the right to withhold payment of costs from current or subsequent DWS grants if the grantee fails to comply with the provisions of its grant agreement.
3. **Ultimate Liability for Use of DWS Funds.** The DWS will hold grantees, including WDBs, responsible for DWS funds received through the grant(s), and may ultimately hold the units of local government that constitute the WDBs responsible for such funds. Specific grant requirements may hold other entities liable for DWS funds.

**H. PUBLIC NOTICE AND OPEN MEETINGS.** The grantee assures that it shall comply with the provisions for public notice and open meetings described as follows:

1. **Open Meetings and Notice.** All meetings of the WDBs, advisory councils, or consortia of LEOs, including meetings of their committees or subcommittees, shall be open meetings that are given appropriate public notice except as noted in subsections 4 and 5 of this section.
2. **Time of Notice.** Meetings of the WDBs and LEOs must be given appropriate public notice as described in Open Meetings of Governmental Bodies, s. 19.81-98, Stats., at least 24 hours before the meeting is to begin.

3. **Meetings Regarding Expenditure of Funds.** All WDB and LEO meetings regarding discussion, deliberation, recommendations, or decisions about the expenditure of funds must be held in open session with public access.
4. **Closed Sessions.** WDB and LEO meetings or portions of meetings may be held in closed session only under conditions allowed in s. 19.81-98, Stats.
5. **Requirements of Closed Sessions.** All closed sessions require advance notice and must be convened first as open meetings. Moving to a closed session requires a majority vote based on the quorum present at the beginning of the meeting with individual votes recorded in the minutes of the meeting.
6. **Additional Information about Wisconsin's Open Meetings Law**
  - a. **Subjects Addressed.** Wisconsin state statutes, Chapter 19, Subchapter IV, contains 13 separate laws: ss. 19.81-19.98. The section on open meetings includes such matters as the policy, definitions, public notice, exemptions, ballots and votes, use of recording equipment, penalties, and enforcement provisions.
  - b. **Applicability.** Generally, all governmental and quasi-governmental bodies must abide by the law. As it relates to DWS grants, the law covers the Council on Workforce Investment (CWI), WDBs and their committees.
  - c. **Definition of Meeting.** Section 19.82(2), Stats. defines a meeting as the convening of members of the body for the purposes of exercising the responsibilities, authority, power, or duties delegated to or vested in the body. If one half or more of the members are present, it is presumed to be a meeting of the body.
  - d. **Public Notice.** Section 19.84, Stats. identifies the specific requirements, and subsection three states every meeting will be preceded by a public notice at least 24 hours prior to the meeting.
    - (1) Section 19.84(2), Stats. requires the public notice to include the time, date, place, and subject matter of the meeting. Publishing a properly prepared agenda satisfies the requirements.
    - (2) There are no specific requirements about location except that proper public notice must be given and the meeting room must be open and reasonably accessible to the public. A meeting could be held even in a private home of an official if proper public notice is given and the home is reasonably accessible to members of the public, including individuals with disabilities, when the meeting is in progress.
  - e. **Telephone Conference.** A telephone conference meeting may be considered "reasonably accessible to the public" if the public and news media can effectively monitor it. This can be accomplished by speakers who give the public the same access to the discussions as each member of the body participating in the conference call. The Attorney General cautions, however, that meetings which encourage public testimony or require visual aids may not be best suited for conference call meetings.
  - f. **Agenda.** If the agenda is properly prepared, it is permissible to place on the agenda an item such as "miscellaneous business" giving public notice that other items may be considered. As a matter of policy, topics of importance or of wide public interest should be postponed until specific notice can be given. If there is knowledge that certain items need to be taken up at the meeting, the agenda should properly include them as part of the public notice.



- g. Interpretation of Statute.** Section 19.81(4), Stats. states that the law shall be liberally construed to achieve the purposes of maintaining open meetings. Wisconsin has a long tradition of open government and public participation, as well as a reputation for clean government. It is sound public policy to act in an open, public arena rather than to give the appearance of doing the public's business behind closed doors.
  - h. Closed vs. Open Meeting.** A closed meeting is one that limits public access. An open meeting allows for public access, but not necessarily public participation. Discussion can be limited to council members during an open meeting. A closed meeting requires proper notice and must be convened first as an open meeting. A duly constituted vote is necessary to move into closed session. Specific guidelines are provided in s. 19.85(1), Stats. This section of the state law also identifies specific purposes for which a meeting may be closed; primarily for personnel or collective bargaining purposes.
- I. CONDITIONS OF EMPLOYMENT AND TRAINING.** In serving participants in DWS-funded programs, conditions of employment and training will be maintained which are appropriate and reasonable for the type of work, the geographic region, and the proficiency of the participant. This section includes the required provisions for training related employment provided in DWS funded programs.

  - 1. Orientation.** All participants must be provided with an orientation to nontraditional careers during their participation in DWS-funded programs.
  - 2. Job Seeking.** Participants who are not assured of placement in unsubsidized employment at the end of their training will be provided a reasonable amount of time for job seeking.
  - 3. Participant Rights in DWS Program Funded Employment.** Each participant enrolled will receive a written statement of her/his program rights and responsibilities as stated in this section, including conditions of employment/training, job duties, benefits, and complaint/grievance procedures of the contractor/employer, subgrantee/service provider, and the DWS.

    - a. Wages.** Participant wages in activities authorized by DWS funded programs may not be less than the highest of (1) the federal minimum wage as determined by the Fair Labor Standards Act, 29 USCS s. 201 et seq.; (2) the state minimum wage; or (3) the prevailing rates of pay for individuals employed in similar occupations by the same employer.
    - b. Wage Rate.** Calculation of the appropriate wage rate for compliance with paragraph a. may not use a training wage exemption from the federal minimum wage.
    - c. OJT Wages.** Participant OJT wages are to be paid by the employer at the same rate, including periodic increases, as similarly situated employees, but not less than required under paragraphs a. and b. of this subsection.
    - d. Benefits.**

      - (1) **Requirement.** Participants employed in training-related DWS program funded jobs shall be provided benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.

- (2) Prohibition. No DWS program funds may be used for contributions to a retirement system or plan on behalf of any program participant.
4. **Participant Training Payments.** A participant may not receive payments for training activities in which s/he fails to participate without good cause.
5. **Health and Safety Standards.** Appropriate standards of health and safety in work and training situations shall be maintained and participants under 18 years of age shall not be assigned to work in any occupation found to be hazardous for youth under 18 by the Fair Labor Standards Act, 29 USCS s. 201 et seq.
6. **Worksite Agreements.** A written agreement is required for each worksite (including On-the-Job Training, Work Experience and Internships) at which a trainee is placed. Worksite agreements must include the following:
- a. **Review Agreement of Terms and Signature.** The worksite agreement is considered an official "agreement" when both the program operator and the worksite's authorized signatory have reviewed it, agreed to the terms, and signed and dated it prior to the trainee starting the job.
  - b. **Provision of Signed Copies.** A signed copy of the agreement shall be provided to each trainee and worksite supervisor.
  - c. **Minimum Content of Agreement.** All agreements shall include the following:
    - (1) The trainee's job title, immediate supervisor's name, place of employment, hours assigned, wages, and benefits agreed upon.
    - (2) A clearly written job description. Job descriptions are needed for several reasons. Trainees need to know what the job duties are, what s/he is responsible for doing, and how s/he appears to "fit" into the employer's work environment.
    - (3) A training plan. The training plan should identify the specific skills to be learned, the method of teaching them, who is responsible for teaching them, and how skill acquisition will be evaluated.
    - (4) The number and names of trainees to be trained.
    - (5) Specification of trainee wage rates.
    - (6) The beginning and ending dates of the agreement.
    - (7) The applicable worksite rules, including the procedure and maintenance of adequate time, attendance, payroll, and other records.
    - (8) The program, fiscal, participant, and other reporting requirements.
    - (9) The process and authority for contract changes/modifications.
    - (10) Assurance that the employer will comply with DWS funded program regulations.
    - (11) A termination clause of nonperformance.
    - (12) Special health or safety equipment or precautions required, if any.
    - (13) Special tools or uniforms required, if any, and whether or not the employer will supply them.
    - (14) Assurance that adequate supervision will be provided at all times while the trainee is on the job site.

- d. **Additional Requirements for On-the-Job Training (OJT).** The following are additional requirements that apply specifically to the OJT program:
- (1) A training plan that includes the following elements: list of skills and/or learning objectives to be achieved; the number of training hours, planned start and end dates for each skill listed; the training method; the mechanism to evaluate the trainee's progress in mastering the skills/objectives; and a place for the signature and signing dates of the trainee, trainer, and/or supervisor. The training plan should also identify any other separate classroom training that may be provided.
  - (2) The method and maximum amount of reimbursement for the OJT.
  - (3) Payments to employers for OJT shall be no more than 50 percent of the wages paid by the employer to such participants. Payments in such amount shall be deemed to be in compensation for the extraordinary costs associated with training participants and in compensation for the costs associated with the lower productivity of such participants.  
(WIA s. 101(31)(B).)
  - (4) Reimbursement for OJT must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. (WIA s. 101(31)(C).)
- e. **Provisions of Worksite Agreements.** The following provisions apply to all worksite agreements. These provisions should be incorporated into worksite agreements or may be part of an employer handbook. If they are part of an employer handbook provided by the subgrantee/service provider to an employer, the worksite agreement must contain a statement by the worksite that they have received and agree to comply with these provisions.
- (1) Funds shall only be used for activities that are in addition to those which would otherwise be available in the area in the absence of such funds.
  - (2) Funds will not be used to relocate an establishment or part thereof at a new or expanded location if such relocation has resulted in the loss of employment for any employee of the establishment at the original location.
  - (3) During hours of work covered by this agreement, no trainee shall engage in partisan or nonpartisan political activities.
  - (4) A trainee shall receive no payments for training activities in which the trainee fails to participate without good cause.
  - (5) Trainee wages must be paid by the employer at the same rates as similarly situated employees, but not less than the state or federal minimum wage, whichever is greater.
  - (6) The employer must comply with applicable health and safety standards established under applicable state and federal laws.
  - (7) Trainees must be provided benefits and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work. This will include unemployment compensation coverage where the employer is normally required to provide such coverage to employees. The employer must also secure worker's compensation or other insurance coverage for work-related injury or illness of trainees.

- (8) No funds may be used for contributions on behalf of any trainee to retirement systems or plans.
- (9) This agreement may not result in the displacement of currently employed workers or reduction in hours, wages, or employment benefits of currently employed workers.
- (10) The employer must obtain a written union concurrence statement if a collective bargaining agreement is in effect for the trainee's position.
- (11) No trainee shall be employed or job opening filled (a) when any other individual is on layoff from the same or any substantially equivalent job, or (b) when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a trainee whose wages are subsidized with federal funds.
- (12) No jobs shall be created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals.
- (13) Funds may not be used in any way to assist, promote, or deter union organizing.
- (14) No program under this Act shall impair: (a) existing contracts for services; or (b) existing collective bargaining agreements, unless the employer and the labor organization concur in writing with respect to any elements of the proposed activities that affect such agreement.
- (15) No trainee shall be required to join a union as a condition for employment unless the training involves individuals employed under a collective bargaining agreement containing union security provisions. (Wisconsin Statute s. 111.06[1][c][1])
- (16) Every employer who hires trainees and receives DWS funds must operate or establish and maintain a grievance procedure relating to the terms and conditions of employment.
- (17) The employer must maintain records and provide access to records as necessary for the grantee, DWD and DOL to assure that funds are being expended in accordance with the purposes and provisions of the agreement.
- (18) The employer must comply with civil rights law and regulations, including nondiscrimination.
- (19) No trainee, staff person, or administrator shall be discriminated against, denied benefits, denied employment, or excluded from participation in connection with any DWS-funded program on the basis of race, color, religion, sex, national origin (ethnic status), age, disability, marital status, offender status, sexual orientation, political affiliation or belief, arrest or conviction record, or refusal to submit to sexual contact or sexual intercourse. (WI Fair Employment Act, 111.31 - 111.395, Stats.)
- (20) Trainees shall not be employed on the construction, operation, or maintenance of any facility used for sectarian instruction or as a place of worship.
- (21) The employer must comply with applicable child labor laws if the participant is under 18 years of age.

- (22) No officer, employee, or other agent of the employer shall recommend hiring, decide hiring, establish salary/wage rate, or provide preferential supervisory treatment with respect to a trainee who is a member of the officer's, employee's or agent's immediate family.
- (23) No trainee shall be placed in or remain working in any position affected by a labor dispute involving work stoppage or strike.

**III. FISCAL REQUIREMENTS**

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### III. FISCAL REQUIREMENTS

This chapter contains the administrative requirements for all grants awarded by the Division of Workforce Solutions (DWS) of Wisconsin's Department of Workforce Development (DWD). In order to promote consistency with other federally assisted programs, the requirements of applicable Office of Management and Budget (OMB) circulars and Department of Labor (DOL) administrative requirements have been taken into consideration in developing these requirements. All DWS grantees must ensure that both they and their grantees have local written policies in place, which require compliance with the applicable portions of this chapter.

**A. ACCESS, RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS.** The grantee shall comply with the provisions for the access, retention and custody of records described as follows:

**1. Access to Records.**

- a. Access and Assistance.** The grantee must maintain records and provide access to them as necessary for DWS to assure that funds are being expended in accordance with the purposes and provisions of agreements and to assist DWS in determining the extent to which the program meets the requirements of the applicable legislation.
- b. Right to Examine.** The grantee shall give the DOL, State of Wisconsin, and DWS, through any authorized representative, the access and right to examine all records, books, papers or documents related to its DWS contracts, including the records that relate to DWS contracts of its subgrantees and contractors.
- c. Cooperation with Reviews.** The grantee shall cooperate with monitoring, auditing, and evaluation activities regarding its DWS-funded programs, including unannounced monitoring reviews conducted by DWS or the DOL.
- d. Public Records.** The grantee shall retain and make available to the public all records pertaining to grants and contracts. The grantee is subject to the Wisconsin Open Records statute and the federal Freedom of Information Act to the same degree as DWS.

**(1) Applicable Statutes.**

- (a) Wisconsin Open Records Statute (ss. 19.31-19.39, ss. 16.61) Records of State Officers and Other Public Records.
- (b) Federal Freedom of Information Act (5 USC s. 552.)

**(2) Exceptions.**

- (a) The grantee is not required to disclose the home address or home telephone number of program participants.
- (b) The grantee may not release any individuals' social security number.

**2. Retention of Records.** This requirement applies to all records pertinent to grants and agreements funded by DWS including financial, statistical, property and participant records and supporting. The following requirements must be complied with:

- a. Retention Period.** The grantee must retain the following records for three years plus additional time beyond three years until any applicable litigation, audit findings or claims have been resolved.

- (1) All records pertinent to each participant's enrollment in programs funded under the agreement, including dates of entry and termination in each activity. The retention period begins on the last day of the participant's enrollment in the program.
  - (2) All records pertinent to participants that have been provided eligibility and are determined eligible, but not served for the applicable eligibility limit. After the applicable eligibility determination has expired, records of applicants determined eligible but not served will then meet the requirement under paragraph c.
  - (3) All records pertinent to each agreement. The retention period will begin on the date of submission the settlement or closeout reports.
  - (4) All records pertinent to complaints/grievances, appeals, and resolutions. The retention period will begin on the day the complaint/grievance is closed following final settlement of the case.
- b. Equipment.** The grantee must retain records of equipment acquired with DWS funds until three years after its disposition, plus additional time beyond three years until applicable litigation, audit findings or other claims have been resolved.
- c. Applicants Determined Ineligible, Refused Certification, or Otherwise Not Served.** The grantee shall retain all pertinent records of each applicant who is determined ineligible. The grantee shall maintain a file with records of each affected applicant for three years from the date of determining ineligibility/refusal. The records shall indicate the reason for ineligibility/refusal.
- 3. Custody of Records.** Each grantee shall designate a records manager whose duties shall include safeguarding records while allowing appropriate access and ensuring timely, authorized disposal. The following are additional requirements for the custody of records:
- a. Transfer.** DWS may request transfer of certain records to its custody from recipient organizations if the organization is no longer able to maintain custody of those records.
  - b. Discontinuance.** The grantee must provide DWS with 30 days advance notice if it intends to discontinue maintenance of its records before the end of the mandatory retention periods indicated above.
  - c. Record storage.** Records shall be retained and stored in a manner that will preserve their integrity and admissibility as evidence in any audit or other proceedings. The burden of production and authentication of the records shall be on the custodian of the records.

## **B. STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS.**

- 1. Written Procedures.** Each grantee must establish written procedures documenting its financial management system.
- 2. Systems Required.** Each grantee must have a financial management system that provides for the following:

- a. **GAAP.** Fiscal control and accounting procedures that are in accordance with generally accepted accounting principles (GAAP). Additional guidance can be found at OMB A-102, OMB A-110, and DOL Regulations at 29 CFR 95 (20) & (21).
  - b. **Records and Source Documentation.** Accounting records that adequately identify the source and application of DWS funds and are properly supported by source documentation. These records must contain information pertaining to DWS awards, authorizations, revenues, expenditures, assets, obligations, and unobligated balances. The records must be sufficient to permit:
    - (1) Preparation of required expenditure reports;
    - (2) Tracing of funds to a level of expenditure adequate to establish that funds have not been used in violation of the applicable restrictions on the use of such funds;
    - (3) Tracing of program income, potential stand-in costs, and other incurred costs that are otherwise allowable except for funding limitations.
    - (4) Preparation of required match expenditure and other reports.
  - c. **Internal Controls.** Effective internal controls that provide for the following:
    - (1) Safeguarding assets from waste, fraud and abuse and from unauthorized purposes and inefficient use;
    - (2) Promoting accuracy and reliability in the accounting records; and
    - (3) Encourage and measure compliance with this document, and other federal, state, and local laws and regulations where applicable.
  - d. **Actual and Planned Expenditures.** Comparison of actual expenditures with budget amounts for each grant.
  - e. **Cost Determination.** Procedures for determining the reasonableness, allowability, and allocability of costs in accordance with the provisions found in Part 2, Chapter 1.B.2., of this document and the terms of the grant or other agreement.
  - f. **Reports.** Accurate, current, and complete disclosure of the financial results of each grant in accordance with the reporting requirements set forth in Section C. of this chapter. DWS requires reporting on an accrual basis. The grantee is not required to establish an accrual accounting system but shall develop such accrual data for its reports on the basis of an analysis of available documentation.
  - g. **Performance and Cost Data.** Development of financial information that relates to performance and unit cost data when necessary.
3. **Failure to Meet Standards.** If the grantee's financial management system fails to meet the standards set forth in this section, DWS will require corrective action by a specific date. Grantees who fail to take corrective action in the time given are subject to having costs withheld or disallowed.
4. **Subgrantee Systems.** Each grantee must ensure that the financial management systems of their subgrantees meet the above listed standards.

## C. REPORTING REQUIREMENTS.

### 1. Financial Status Reports (FSR).

- a. **Monthly Due Dates.** Grantees must submit the FSR for all grants on a monthly basis. The FSRs must be received by DWS within 30 days of the end of the reported month.
- b. **Accrued expenditures.** The FSR must be prepared on an accrual basis. Accruals may consist of, but are not limited to, the following:
  - (1) Wages and salaries earned but not paid;
  - (2) Invoices received but not paid;
  - (3) Subgrantee accrued expenditure reports received but not paid;
  - (4) Nonrefundable tuition and fees for a student who is enrolled in and is attending class(es) but the subgrantee has not yet invoiced the grantee;
  - (5) Payments earned on an OJT contract as of the end of a month but not yet due or paid to the employer.

At the end of the grant period the grantee shall make necessary adjustments to convert accrued expenditures to actual.

### 2. Procedures for Closeout.

- a. **Timely and Accurate Data.** The grantee must submit accurate and timely data to DWS according to the following deadlines:
  - (1) All DWS grantees must submit a closeout report to DWS for receipt within 90 calendar days after the grant funding authority expires, unless the grant agreement specifies otherwise.
  - (2) Grantees may request an early closeout by notifying DWS at the time the grant funds are fully expended and preparing a closeout report at that time.
- b. **Closure of Grant Accounts.** Upon submittal of the closeout report the grantee should remove the closed grant from its financial status report and its invoice. If a closeout report is not accepted, DWS will notify the grantee. Upon submittal of the closeout report, the grantee should close the accounts for the affected grant. No further entries to the accounts will be allowed without prior written approval by DWS.

3. **Late and Inaccurate Reports.** If required reports, including the closeout report, are not accurate or are not submitted on a timely basis, DWS may withhold payment of the grantee's costs incurred under the current grant or subsequent active grants until the required reports are received.

4. **Additional Reports.** The grantee may be required to submit additional reports requested by DWS for the performance of its legal responsibilities. Reports may include:

- a. **Participant Reports.**
- b. **Performance Award Calculation.**
- c. **Match Reports.**

d. **Other reports as requested.**

**D. CASH MANAGEMENT STANDARDS.**

**1. Grant Payments.**

- a. **Basic Standard.** Grantees can either be paid in advance or on reimbursement. In all cases, cash balances must be limited to the actual immediate disbursement needs (as defined in h. below) in carrying out the DWS program.
- b. **Advance Payments.** Each grantee will be provided advance payments, to the extent possible, following the procedures of the DWD/ASD.
- c. **Reimbursement.** Reimbursement of actual cash disbursements will be used when cash advances are not possible.
- d. **Working Capital Advance Payments.** If neither advance payments nor reimbursement is possible, DWS may provide cash on a working capital advance payment basis. Such an advance may not exceed 20 percent of the award amount. Subsequent reimbursements will be for actual cash disbursements.
- e. **Non-Grant Cash Receipts.** The grantee must disburse cash received as a result of program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional grant cash payments.
- f. **Cash Depositories.**
  - (1) Grantees are encouraged to use women-owned and minority-owned banks, which are at least 50% owned by women or minority group members.
  - (2) The grantee is not required to maintain a separate bank account but must separately account for DWS funds on deposit.
  - (3) Deposits of DWS funds must be made in accounts insured by the FDIC if possible.
  - (4) Funds must be kept in interest bearing bank accounts unless:
    - (a) Under \$120,000 is received annually; or
    - (b) Under \$250 of interest income is anticipated annually; or
    - (c) Minimum balance/service fees would offset interest income.
- g. **Interest Earned on Advances.** Grantees must account for interest earned on advances of DWS funds as program income, as provided at Section F.1.e. of this Chapter.
- h. **Excess Cash.** Excess cash is the average daily cash balance maintained that exceeds the greater of \$10,000 or three days average expenditures. The grantee must develop procedures to maintain cash balances below these amounts. Grantees may reduce cash balances by: reducing the amount of the request, requesting cash more frequently, minimizing the time elapsing between the receipt and disbursement of DWS funds, and by returning excess cash to DWS. If the grantee fails to operate within this requirement and accumulates excess cash and related interest income, the following may be required:
  - (1) DWS may require corrective action to minimize or eliminate excess cash if the grantee consistently fails to conform to these guidelines.

- (2) DWS may charge the grantee a penalty assessment based on the amount of interest income earned. The grantee may pay this amount from the account where the interest earned on the excess cash was credited. Otherwise, the payment must be from non-DWS funding sources.
- (3) In the event of serious abuse, as determined on a case-by-case basis, DWS may seek recovery of funds.

**E. PROCEDURES FOR INVOICING DWS FOR CASH ADVANCE OR REIMBURSEMENT.**

1. **Invoice Preparation.** Grantees must submit invoices to the DWD/ASD Division on the appropriate form, using the instructions provided. DWS may issue additional instructions for invoice preparation. Requests must be based on actual cash expenditures to date. Forms are located on the DWS website at:

**WIA:** <http://www.dwd.state.wi.us/dwdwia/wia/wiaforms.htm>

2. **Invoice Processing Timeframes.** DWS processes invoices and issues checks daily. Invoices received and approved by DWD/ASD by 2:00 p.m. will result in a check mailed two business days later. Grantees are to allow for mailing time both to and from DWD/ASD when requesting cash.

3. **Holiday Schedule**

- a. **Schedule.** Each state holiday that falls within the regular workweek (M-F) usually delays the processing timeframes by one day.
- b. **Holiday List.** State holidays are as follows:
  - (1) January 1st
  - (2) The third Monday in January
  - (3) The last Monday in May
  - (4) July 4th
  - (5) The first Monday in September
  - (6) The fourth Thursday in November
  - (7) December 24th, 25th, and 31st

**F. PROGRAM INCOME.** Program income means income received by the grantee and (1) directly generated by grant supported activity or (2) earned only as a result of the grant (PS 97-300 s.141 (m)); (2.0 CFR 627.450.)

1. **Income Included:**

- a. **Fees.** Income from fees for services performed and from conferences. Examples include fees received from another entity for certifying applicant eligibility and entering participant data into a participant information system.
- b. **Rent.** Income from use or rental of real or personal property acquired with grant funds.
- c. **Sale of Commodities.** Income from sale of commodities or items produced under a grant.

- d. **Produced under a grant.** Income earned by a governmental or private nonprofit service provider in excess of costs under either a fixed price or reimbursable agreement.
  - e. **Interest Income.** Interest income earned on advances of grant funds.
2. **Income not included:**
- a. **Rebates, Credits & Refunds.** Rebates, credits and refunds, since these should be offset against related expenditures.
  - b. **Government Revenues.** Taxes, special assessments, levies, fines and other such government revenues raised by a grantee.
  - c. **Royalties & License Fees.** Income from royalties and license fees for copyrighted material or patents.
3. **Property Sale Proceeds.** Proceeds from the sale of property must be accounted for in compliance with 20 CFR 627.465.
4. **Program Income Defined as Net.** The total amount of program income generated by an activity and reported to DWS must be calculated by deducting costs incurred from the gross income received.
5. **Program Income Use.**
- a. **General.** Program income may be added to grant funds to expand the program objectives by extending the activity period, increasing the number of participants served, or improving the quality of the program. Funding an additional project with program income earned could also further grant objectives.
  - b. **Restrictions.** Program income must be added to the amount of grant funds committed to the title and grant under which it is earned and be used for allowable grant expenses. The use of program income funds is bound by the administrative cost category limitations.
  - c. **Match.** Program income earned from federal sources cannot be used to fulfill match requirements. Program income earned from non-federal sources can be used to fulfill match requirements, unless prohibited in the grant agreement.
  - d. **Time Limits.** Program income must be used prior to submission of the final report for the funding period of the program year to which the earnings are attributable. The maximum allowable time period will be stated in the grant agreement.
  - e. **Transfer.** If the grantee that earned the program income cannot use it for grant purposes, the grantor may permit another entity to do so.
  - f. **Forfeit.** If the program income is not utilized within the timeframe allowed the program income must be returned to DWS.
  - g. **Post-program Use.**
    - (1) Rental fees on real property or equipment acquired with grant funds continue to be program income in post-funding periods and must be used in compliance with the requirements of subsection 5.
    - (2) Other program income acquired after the end of the funding period must be used in accord with the grant agreement.
6. **Reporting Requirements.** Grantees must report program income earned and used in its regular fiscal reports.

**G. SUBGRANTEE MONITORING.** The grantee must comply with the following provisions for subgrantee monitoring:

1. **Monitoring Plan Requirements.** The grantee shall develop a monitoring plan that addresses the scope, frequency, and subgrantee performance standards. This monitoring plan must be included in the grant plan.
2. **Grantee General Requirements.** The grantee must conduct annual on-site monitoring of subgrantee program, financial, compliance, nondiscrimination and EEO to ensure that all terms of their agreement and the appropriate laws and regulations are complied with. The grantee must also ensure that all subgrantees conduct on-site monitoring of all work/educational sites to ensure that program objectives have been met.
3. **Compliance Monitoring.** The grantee must monitor the performance of its contractors and subgrantees to ensure compliance with appropriate laws, regulations, DWS policy, and the terms and conditions of the agreement.
4. **Systematic Reviews.** The grantee must systematically, through desk review and on-site review, monitor performance based on established criteria.
5. **Report.** The grantee must document any findings and issues in written reports to the subgrantee.
6. **Corrective Action.** The grantee must comply with the following provisions for corrective action and sanctions:
  - a. **Corrective Action for Noncompliance.** The grantee must attempt to resolve noncompliance issues by:
    - (1) Notifying the subgrantee of the identified monitoring findings; and
    - (2) Either requiring or providing a corrective action plan that provides a resolution within a specific timeframe and includes the sanctions if the corrective action is not implemented.
  - b. **Notification of Sanctions.** The grantee must provide written notification to the subgrantee of sanctions to be invoked if:
    - (1) The subgrantee refuses to submit or agree to adhere to the plan; or
    - (2) The monitoring finding continues after corrective action is required.The notification shall provide the rights to an appeal and hearing process in accordance with this Guide.
  - c. **Severity of Sanctions.** The sanctions must reflect the severity of the monitoring finding and shall take into consideration conditions in Chapter IV.D. of this Guide. The grantee must inform DWS, in writing, of any sanction imposed or any referral to other agencies for prosecution. Other sanctions may result due to referral from the appropriate governmental agency, referral from law enforcement agency for prosecution, or other action as provided by law.
  - d. **Monitoring of Corrective Action Results.** The grantee must monitor the corrective action plan to ensure that the results and timeframes specified are achieved.
7. **Records.** The grantee must maintain written records to verify that required monitoring, corrective action, follow-up and resolution have occurred.



8. **Results.** Monitoring findings must be considered in subsequent program planning and in the selection of contractors and subgrantees.
9. **Grantor Monitoring.** The grantee must participate in monitoring reviews conducted by any State or Federal agency. The grantee must provide monitors with all program, participant and fiscal records that are requested.

**H. PROCUREMENT STANDARDS.** The following standards apply to the procurement of property, facilities, supplies, equipment, professional services including consultants, and other services including the program-specific services of program operators. These standards are applicable for all types of agreements including grants, contracts, and purchases of services, memos of understandings, and other legally binding procurement documents. Standards pertaining to the selection of service providers are included in Subsection 10.

1. **Written Procedures.** Each grantee must establish and use its own written procurement procedures that reflect applicable Federal, State, and local laws and regulations and that provide for the following standards to the maximum extent practical:
  - a. **Avoidance of Unnecessary or Duplicative Facilities, Goods, or Services.** Procurement of unnecessary or duplicative facilities, goods, or services from Federal, State, or local sources must be avoided unless DWS-funded alternative facilities, goods, or services would be more effective or likely to achieve performance goals.
  - b. **Lease/purchase Analysis.** Where appropriate, an analysis must be made of lease and purchase alternatives to determine which would be the most economical and practical procurement.
  - c. **Required Conditions.** Solicitations for goods and services must provide for all of the following.
    - (1) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features that unduly restrict competition.
    - (2) Requirements that the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
    - (3) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
    - (4) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitations.
    - (5) The acceptance, to the extent practicable and economically feasible, of products and services described in the metric system of measurement.
    - (6) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources, protect the environment, and are energy efficient.

- d. **Competition.** Procurements must be conducted in a manner that provides for full, open and nonrestrictive competition. The procedures must ensure that solicitations identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
  - (1) Each grantee must ensure that all qualified lists of persons, firms or other organizations that are used in acquiring goods and services are current and include sufficient numbers of qualified sources to ensure maximum open and free competition.
  - (2) A grantee that develops specifications, the statement of work, an invitation for bids, a request for proposals, or evaluates or recommends such proposals may not be eligible to compete for the procurement. This applies to all types of agreements.
- e. **Consideration of Price.** The proposal prices from contractors offering to meet specifications in the procurement of goods and services must be considered. Price analysis shall be done in accordance with the requirements located in Subsection 4.
- f. **Consideration of Demonstrated Ability.** Responsible organizations possessing the demonstrated ability to perform successfully under the terms and conditions of a proposed subgrant or contract must be considered. A determination of demonstrated ability shall be done in accordance with the requirements located in Subsection 10.
- g. **Consideration of Small, Minority-Owned and Women's Businesses.** Small businesses, minority-owned businesses, and businesses owned by women must be considered. Grantees must take all of the following steps:
  - (1) Ensure that small businesses, minority-owned firms, and businesses owned by women are used to the fullest extent practicable.
  - (2) Make information on forthcoming opportunities available and arrange timeframes for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and businesses owned by women.
  - (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and businesses owned by women.
  - (4) Encourage contracting with consortiums of small businesses, minority-owned firms, and businesses owned by women when a contract is too large for one of these firms to handle individually.
  - (5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Wisconsin Department of Commerce's Minority Business Development Bureau in the solicitation and utilization of small businesses, minority-owned firms, and businesses owned by women.
- h. **Review of Compliance.** Each grantee's or contractor's compliance with the terms of the grant or contract must be reviewed.
- 2. **Code of Conduct.** Each grantee must maintain a written code of conduct that provides standards governing the performance of its officers, employees, or agents engaged in the awarding and administration of contracts and grants using DWS funds. These standards must provide the following:

- a. **Conflict of Interest.** The standards must provide procedures for identifying and dealing with conflict of interest. See Chapter II.E.1 of this Guide.
- b. **Nepotism.** The standards must prohibit nepotism. See Chapter II.E.5. of this Guide.
- c. **Gratuities and Favors.** The standards must forbid the solicitation or acceptance of gratuities, favors, or anything of monetary value from actual or potential vendors/contractors/grantees.
- d. **Penalties.** To the extent permitted by State or local law or regulations, such standards must provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

### 3. Types of Procurement.

- a. **Methods.** Each grantee must use one of the following methods of procurement, as appropriate for each procurement action:

- (1) **Small Purchase Procedures.** Simple and informal procurement methods are for securing services, supplies, or other property not in excess of \$5,000. Grantees must not divide one purchase into several purchases merely to be able to use small purchase procedures. Price or rate quotations must be documented from an adequate number of qualified sources.

Subparagraph (2) and (3) are types of Request-For-Proposals and must be used for all competitive procurements in excess of \$5,000.

- (2) **Sealed Bids (Formal Advertising).** Bids are publicly solicited procurements for which a firm, fixed-price award (lump sum or unit price), or other fixed-priced arrangement is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids (IFB), is the lowest in price. IFBs must be publicly advertised, and bids must be solicited from an adequate number of organizations.
- (3) **Competitive Proposals.** Normally conducted with more than one source submitting an offer and either a fixed-price or cost-reimbursement type award is made. A methodology for technical evaluations and award to the responsible offeror whose proposals are most advantageous to the program with price, technical, and other considered factors must be established and documented.
- (4) **Noncompetitive Proposals (Sole Source).** Procurement made when soliciting a proposal from only one source, the funding of an unsolicited proposal, or when competition is determined inadequate. Such procurements must be minimized to the extent practicable and, in every case, be justified and documented. There is no dollar threshold applicable to noncompetitive procurement. Sole source may be used only when the award is infeasible under (1), (2), or (3) above and one of the following circumstances applies:
  - (a) The item or service is unique and/or available only from a single source;
  - (b) The public exigency or emergency need for the item or service does not permit a delay resulting from competitive solicitation.

- (c) It is necessary that the needed items are manufactured by a certain source in order to be compatible and interchangeable with existing equipment;
  - (d) After solicitation of a number of sources, competition is determined inadequate;
  - (e) OJT contracts, except OJT brokering contracts, which shall be selected competitively;
  - (f) Enrollment of individual participants in classroom training occurs.
  - (g) Data is unavailable for competitive procurement; or
  - (h) DWS authorizes noncompetitive proposals.
  - (i) The services are deemed to be appropriate to a Job Center and its partners, one of which is the grantee. In addition, the following conditions apply:
    - (i) There must be an advance agreement between the Job Center partners that these services will be coordinated between partner programs and that such services will be provided by the partners.
    - (ii) Where certain Job Center related common costs are to be shared by the partners, there must be an advance agreement between the partners that identifies such costs and describes the methods of cost sharing.
    - (iii) The agreement must be in writing.
- b. **Pass Through.** The procurement rules do not apply to pass through of funds from any unit of State or local government or WDA to other such units, such as a local education agency. To qualify as a pass through, the receiving entity must either further pass through the funds to another such entity or procure services in accordance with the procurement rules.
- c. **Independent Agreements.** Generally, agreements between organizations are made independently. Such agreements include grant and contract agreements. In some cases agreements may not be made independently. This may occur when one party to the agreement is able to substantially control or influence the actions of the other. Such agreements are allowable, although no contract or grant is deemed to exist.
  - (1) Less than independent agreements within an organization may include agreements between sub-units of an organization. They may also include agreements between an organization and a director, trustee, officer, or key employee of the organization or his/her immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.
  - (2) Less than independent agreements between organizations may include (a) agreements between organizations under common control through common officers, directors or members; (b) agreements between an individual on the board of directors of one organization and an immediate family member on the board of directors of another organization; or (c) agreements between an individual who is an officer or key employee of one organization and him/herself as a member of the board of directors of another organization.

#### 4. Cost /Price Analysis.

- a. **Standards and Procedures.** Each grantee must establish standards and procedures on the performance of cost/price analysis.
- b. **Performance of Analysis.** Each grantee must perform a price analysis (and, in some instances, a cost analysis) in connection with every procurement action, including modifications, except for modifications determined not to have a fiscal impact. The method and degree of analysis depends on the facts surrounding the particular procurement and pricing situation.

- (1) **Independent Estimates.** The grantee must make independent cost or price estimates before receiving bids or proposals.
- (2) **Price Analysis.** A price analysis must be used when price reasonableness can be based on:
  - (a) Adequate price competition;
  - (b) An established catalog or market price of a commercial product sold in substantial quantities to the general public; or
  - (c) Prices set by law or regulation, including situations involving inadequate price competition and sole source procurements where a price analysis may be used in lieu of a cost analysis.
- (3) **Cost Analysis.** A cost analysis is necessary:
  - (a) When the offeror is required to submit the elements of the estimated cost (e.g., as in the case of subrecipient relationships);
  - (b) When adequate price competition is lacking; or
  - (c) For sole source procurements, including modifications.

Cost analysis is not required when price reasonableness can be adequately determined under any of the situations noted in Subparagraph (2) above.

- (4) **Certification and Adjustments.** When a cost analysis is necessary and there is inadequate price competition, the offeror must certify that to the best of its knowledge and belief, the cost data are accurate, complete, and current at the time of agreement of price. Awards or modifications negotiated in reliance on such data should provide the awarding agency a right to a price adjustment to exclude any significant sum by which the price was increased because the awardee had knowingly submitted data that were not accurate, complete, and current as certified.
- (5) **Reasonableness of Costs in Procurement of Services.** Grantees must establish written procedures that provide the selection process and procurement with the ability to determine and justify the reasonableness of proposed contract costs before being awarded. The procedures must emphasize the methods of cost/price analysis to be used and documentation of evidence. The procedures must address and require the following:
  - (a) **Request for Proposals (RFP).** Clear and precise RFPs must be prepared to obtain competitively priced responses. All legal and administrative restrictions, requirements, and options must be included in the RFP.
  - (b) **Rating Process.** An RFP must have an equitable rating process so that proposed cost/price components are analyzed and applied to all prospective contractors.

- (c) **Analysis and documentation of cost/price evidence.** Grantees must determine the needed forms of written documentation to justify the reasonableness of a particular contract.

The grantee has the burden to prove reasonableness of costs.

(6) **Types of Acceptable Cost or Price Analysis.**

- (a) **Projected costs.** Prospective contractors could be required to submit a budget that estimates costs in line item detail. Each line item is then reviewed for reasonableness. Costs for certain items that appear excessive or insufficient can then be revised in the final contract. Inclusion of line item costs in the bid is particularly important if the contractor is the only bidder or never provided training services before.
- (b) **Historical cost/price.** A comparison of the cost/price in the contract with the cost/price of previous contracts for the same services would provide useful documentation in support of a funding decision. Cost data on a previous grant performed by the contractor for the same training could be used as a means for determining cost reasonableness on a current contract.
- (c) **Market price.** This written documentation would compare the price sought by the contractor to the rate at which others in the geographical area offer the same service.
- (d) **Performance standard application.** This involves applying the standard for cost per entered employment to the contract cost.
- (e) **Risk of loss.** This involves documenting indicators of predictable obstacles in achieving results due to local conditions beyond the contractor's control, such as unemployment rates.

- (7) **Cost or Pricing Data Records.** Any organization receiving a contract, grant, or modification for which cost or pricing data is required must maintain records that relate to such cost or pricing data for three years from the date of final payment. The agency books and records may be subject to audit to the extent that such books and records relate to such cost or pricing data.

c. **Excess Program Income or Profit.** Procurements must not permit excess program income (for nonprofit and governmental entities) or excess profit (for private for-profit entities.) If profit or program income is included in the price, the grantee must negotiate profit or program income as a separate element of the price for each procurement in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit or program income, consideration shall be given to the:

- (1) Complexity of the work to be performed;
- (2) Risk borne by the awardee;
- (3) Offeror's investment;
- (4) Amount of subcontracting/subgranting;
- (5) Quality of the offeror's record of past performances;
- (6) Industry profit rates in the surrounding geographical area for similar work; and
- (7) Market conditions in the surrounding geographical area.

- d. **Cost Allowability.** Each grantee must charge to the agreement only those costs that are consistent with the allowable and allocable cost provisions of this document.
- e. **Cost Plus.** The cost, plus a percentage of cost method of contracting, must not be used.

5. **Oversight.**

- a. **Ensure Compliance.** Each grantee must conduct and document oversight to ensure compliance with the procurement standards, in accordance with the requirements of Section G, Monitoring.
- b. **Contract Administration.** Each grantee must maintain an administration system that ensures that vendors and subrecipients perform in accordance with the terms, conditions, and specifications of their awards.

6. **Transactions between Units of Government.**

- a. **Cost Reimbursement Basis.** Except as provided in Paragraph b., procurement transactions between units of government, or any other entities organized principally as the administrative entity for WDAs, must be conducted on a cost reimbursement basis. Cost plus type awards are not allowable.
- b. **Transactions with Schools.** In the case of procurement transactions with schools that are a part of these entities, such as State universities and secondary schools, tuition charges and/or entrance fees do not have to be broken out by items of cost when the charges or fees are:
  - (1) Not more than the school's catalog prices,
  - (2) Necessary to receive specific training,
  - (3) Charged to the general public to receive the same training, and
  - (4) For training of participants.

7. **Standard Grantor Award Agreement Provisions.** Each grantor award agreement with a grantee (subgrantee/vendor) must include the following:

- a. **Written Agreement.** The agreement must be in writing.
- b. **Specification of Deliverables and Payment Basis.** The agreement must clearly specify deliverables and the basis for payment.
- c. **In the case of awards to subgrantees, contain clauses that provide for:**
  - (1) Assurance of compliance with grant regulations;
  - (2) Assurance of nondiscrimination and equal opportunity as found in 29 CFR § 34.20, assurance required; duration of obligation and covenants.
- d. **In the case of awards to vendors, contain a clause that provides for:** Access by the grantor, DWS, and the DOL to any records, including computer records, of the contractor that support costs to the program in order to conduct audits and examinations and to make transcripts and photocopies. This right also includes timely and reasonable access to contractor's personnel for the purpose of interviews and discussions related to such documents.

**e. In the case of awards to both subgrantees and vendors, contain clauses that provide for:**

- (1) Administrative, contractual, or legal remedies in instances where contractors/subgrantees violate or breach agreement terms, which shall provide for such sanctions and penalties as may be appropriate;
- (2) Notice of 29 CFR Part 97.34 requirements pertaining to copyrights (agreements which involve the use of copyrighted materials or the development of copyright materials);
- (3) Notice of requirements pertaining to rights in data. Specifically, the awarding agency and DOL shall have unlimited rights to any data first produced or delivered under the agreement (agreements which involve the use/development of computer programs/applications, or the maintenance of databases or other computer data processing program, including data input);
- (4) Termination for cause and convenience by the awarding agency, including the manner by which the termination will be effected and the basis for settlement;
- (5) Notice of awarding agency requirements pertaining to reporting;
- (6) Payment conditions and delivery terms;
- (7) Process and authority for agreement changes;
- (8) Provision against assignment;
- (9) Audit Language. Any grant agreement or contract funded with a unit of government or a nonprofit entity must contain the language found in (a) and (b) regarding audit procurement.
  - (a) The grantee must have a single, organization-wide or grant specific financial and compliance audit performed by a qualified independent auditor if required to do so under Federal law and regulations.
  - (b) The audit must be performed in accordance with Government Auditing Standards (1994 revision) and OMB Circular A-133 (2003 revision), and, when applicable, the State Single Audit Guidelines, issued by the Wisconsin Department of Administration (DOA.)
  - (c) Commercial organizations receiving more than \$300,000 in Federal funds per year are required to have an organization-wide or grant-specific audit.
- (10) Debarment and Suspension.
  - (a) A signed certification regarding debarment and suspension must be incorporated into this agreement.
  - (b) Funding must be terminated upon debarment or suspension of the grantee (or contractor) during the life of the agreement.
  - (c) No agreement shall be made with organizations named on the federal government's Debarment and Suspension list.
- (11) Lobbying. (Byrd Anti-Lobbying Amendment)
  - (a) A signed certification regarding lobbying must be incorporated into this agreement, accompanied by a copy of the disclosure report (where applicable) which must be forwarded to DWS.



- (b) At a minimum the certification and the disclosure report must be updated annually in accordance with requirements.
- (12) Requirements regarding linkages with Pell eligible educational institutions and other federally funded employment and training programs.
  - (a) Use of DWS funds to enable a participant to enroll in a Pell-eligible training program must be limited by this agreement to amounts determined to be a necessary supplement to Pell grants and financial aid available from non-DWS funding sources.
  - (b) The Pell-eligible educational institution named in this agreement must provide the grantor with a copy of the Student Aid Report (SAR) received from the U.S. Department of Education (DOED) and other documents pertinent to determination of financial aid available from non-WIA funding sources.
- (13) Clean Air Act and the Federal Water Pollution Control Act. For agreements in excess of \$100,000, a provision requiring compliance with applicable standards must be present. The standards for the Clean Air Act are at 42 U.S.C. 7401 et seq. and for the Federal Water Pollution Control Act are at 33 U.S.C. 1251 et seq., as amended.
- f. **Additional Clauses.** The grantor may establish additional clauses, if necessary, for grantee award agreements. These may include, but are not limited to statement of work, record retention, conflict of interest, documentation of progress and evaluation during training, trainer qualifications, program income, participant selection/eligibility, performance standards, and maintenance of effort.

#### 8. **Disputes.**

- a. **Protest Procedures.** Each grantee must have protest procedures to handle and resolve disputes relating to their procurements. A protester must exhaust all administrative remedies with the grantee before pursuing a protest at a higher level.

#### 9. **Records.**

- a. **Maintenance.** Each grantee must maintain records sufficient to detail the significant history of a procurement. These records must include, but are not necessarily limited to, the following:
  - (1) Rationale for the method of procurement;
  - (2) The selection of agreement type;
  - (3) Awardee selection or rejection;
  - (4) Basis for agreement price.
- b. **DWS Monitoring.** DWS may annually conduct on-site monitoring of each WDA to ensure compliance with the procurement standards.

#### 10. **Selection of Service Providers.**

- a. **Primary Consideration.** The primary consideration in selecting agencies to deliver services shall be based on demonstrated performance in terms of meeting performance goals, cost, quality of training, characteristics of participants, and making available appropriate supportive services.

- b. Competitive Based Selections.** Each grantee, to the extent practicable, must select service providers on a competitive basis, in accordance with the preceding procurement standards.
- c. Grantee Self-Selection.** Grantees may operate its own programs only if allowed by applicable regulations and if permitted by DWS. The WIA Service Provider Policy may be used as a reference in determining if self-selection is appropriate.
- d. Determination of Demonstrated Performance.** Awards are to be made to organizations with the demonstrated ability to perform successfully under the terms and conditions of a proposed subgrant or contract. Where comparable proposals have been received from an offeror that has demonstrated performance and also from a high-risk subrecipient (20 CFR § 627.423), and a determination has been made that both proposals are fundable, the award should be made to the offeror that has demonstrated performance, unless other factors dictate otherwise. Determinations of demonstrated performance must be documented in writing, completed prior to the award of an agreement, and take into consideration such matters as whether the organization has:

  - (1) Adequate financial resources or the ability to obtain them;
  - (2) The ability to meet the program design specifications at a reasonable cost, as well as the ability to meet performance goals;
  - (3) A satisfactory record of past performance, including demonstrated quality of training; adequate retention rates from past programs; where applicable, the ability to provide or arrange for appropriate supportive services; retention in employment; and earning rates of participants. Such performance measures as retention in training, training completion, job placement, and rates of licensure must also be considered.
  - (4) The ability to provide services that can lead to the achievement of competency standards for participants with identified deficiencies;
  - (5) A satisfactory record of integrity, business ethics, and fiscal accountability;
  - (6) The necessary organization, experience, accounting, and operational controls; and
  - (7) The technical skills to perform the work.
- e. Educational Services.** Appropriate education agencies in the WDA must be provided the opportunity to provide educational services, unless alternative organizations would be more effective or would have greater potential to enhance the participants' continued educational and career growth.

  - (1) In order for WDAs to select an agency other than an educational agency to provide educational services, the specific procedures and criteria must be described to determine that the alternative agency would be more effective or would have greater potential to enhance the participant's continued educational and career growth.
  - (2) When contracting with a private for-profit proprietary school to provide training for participants, the administrative entity must determine that the school and the program proposed by the school have been approved by the Wisconsin Educational Approval Board. Approval by the Board is necessary before a for-profit school may legally operate training programs in Wisconsin.

- f. State Education Coordination.** Service providers under agreements to conduct projects must be selected in accordance with the requirements of this Subsection.
  - g. Amounts for Service Providers.** Each grantee must ensure that, for all services provided to participants through contracts, grants, or other agreements with a service provider, such contract, grant, or agreement must include appropriate amounts necessary for administration.
  - h. Awarding Points.** When a grantee has a policy of awarding additional points to proposals received from such organizations as minority or women-owned business enterprises, and this policy is generally applicable to its other funds, the grantee may apply this policy to its DWS grant funds. If the policy to provide additional rating points applies only to DWS grant funded programs, this policy cannot be continued.
  - i. Public Information.** Grantees must describe in the plan the process used by the administrative entity to inform the public of the procedures, including public hearings and times, used to select service providers and the appeal procedures available to the public and other agencies not selected.
- I. PROPERTY MANAGEMENT STANDARDS.** The grantee must comply with property management standards described as follows:

  - 1. Property Acquisition.** Real or personal property purchased with DWS funds must be used for purposes authorized. All such property must be properly maintained and safeguarded against loss, theft or damage.

    - a. Title of Property Acquired Under Prior Grants.** WDAs were given reversionary title to all property that was purchased by grantees with DWS funds.
    - b. Status of Property Acquired Under Prior Grants.** WDAs were given the option of retaining or disposing of such property. Retained property must be used for employment and training programs. Disposed property must be done so in accord with subsection 3.
    - c. Record Retention.** Property management and disposition requirements in this section apply to all federally funded property to which WDA administrative entities retain title rights. Records of options chosen under paragraphs a. and b. of this subsection are the responsibility of each affected WDA administrative entity.
    - d. Acquisitions.** Prior DWS approval is required for the purchase or lease-purchase of equipment with a unit acquisition cost of \$5,000 or more. Chapter II.D. of this manual determines the allowability of various property purchases, particularly subsection 16 for equipment and other capital expenditures, and subsection 33 for rental costs.
    - e. Property Title and Conditions.** Title/ownership of property acquired with DWS funds or transferred from federally funded programs is determined as follows:

      - (1) **Ownership.** The grantee can assume title/ownership of personal property such as equipment and supplies.
      - (2) **Reversionary Rights.** DWS retains reversionary rights to equipment with a unit acquisition cost of \$5,000 or more.
      - (3) **Copyrights.** The copyrighting of any material developed with DWS funds is forbidden without written DWS approval.

- (4) **Use.** Equipment cannot provide services to non-federal organizations at below market rates.
    - (5) **Insurance.** Equipment must be insured by the grantee if other non-federally funded equipment is insured.
    - (6) **Depreciation.** All property costing \$5,000 or more must be depreciated over its useful life, unless waived by DWS.
  - f. Federal Property Program.** Grantees that are state agencies, units of local government, Indian tribes, or tax-exempt nonprofit organizations may be eligible to acquire surplus property at low cost from the federal property program.
  - g. Composite Unit Reporting.** If items of equipment are to be used together and cannot function separately, the items are considered one unit of equipment. Equipment can be considered one unit even if the units are of different brands or were purchased separately.
  - h. Software Reporting.** Computer-related software programs normally must be reported as equipment. DWS has no reversionary rights to software programs if the vendor and/or licensing agreements prohibit its transfer. The grantee is required to maintain a record of its software programs.
  - i. Property acquired by commercial subrecipients.** Title to property acquired or produced by a subrecipient that is a commercial organization shall vest in the awarding governmental agency. Prior approval of the awarding agency is needed to acquire property.
- 2. Property Control.** Each grantee must establish procedures to adequately safeguard all property. Grantees shall provide the following for all DWS purchased equipment costing at least \$5,000:
- a. Register.** Maintain a register showing the following:
    - (1) Description of the property;
    - (2) Serial number/model number;
    - (3) Inventory tag/identification number;
    - (4) Date received;
    - (5) Acquisition source (commercial supplier, federal surplus property, transfer);
    - (6) Unit acquisition cost;
    - (7) Award number purchased under;
    - (8) Location of the property;
    - (9) Condition of the property;
    - (10) Percentage of federal cost;
    - (11) Whether title vests in grantee or Federal Government;
    - (12) Ultimate disposition data including date and sales price.
  - b. Inventory.** Conduct an annual physical inventory documenting the process and results;
  - c. Identification Tags.** Attach identification tags to all such property; and

- d. **Reconciliation of Records.** Periodically (no less than annually) reconcile property records to the general ledger, making appropriate adjusting entries to make the general ledger equal to the detailed property register.

3. **Property Disposition.** The following are the requirements for disposition of property:

- a. **Unit acquisition cost of \$5,000 or more.** Prior DWS approval is required for the disposition of equipment with a unit acquisition cost of \$5,000 or more. This includes property that was purchased with DWS funds or transferred from other programs. These requirements apply to such property whenever the grantee discontinues operation of DWS program, has no further use for the property, intends to use it for a purpose other than a DWS program, wants to trade the property, or needs to dispose of unusable property. Before any such property is disposed of, the grantee must comply with the following requirements:

- (1) The grantee must be sure that all relevant records are up to date.
- (2) The grantee must submit the following information in writing to the appropriate DWS program manager for all property to be disposed of:
  - (a) The description;
  - (b) The acquisition source;
  - (c) The unit acquisition cost;
  - (d) The quantity;
  - (e) The condition;
  - (f) The funding source under which it was acquired;
  - (g) The reason for disposition; and
  - (h) The proposed disposition, including what will be done with any money resulting from disposition.
- (3) Written authorization from DWS must be obtained.
- (4) The sale of equipment that is no longer needed shall be an action of last resort. Before a sale is made, the grantee shall take the following steps, which are listed in priority ranking:
  - (a) Transfer the equipment to other DWS-funded programs of the grantee;
  - (b) Transfer the equipment to similar DWS-funded programs of other grantees within the state. In transferring equipment to similar programs, WDAs should first offer the equipment to the other WDAs, then to non-WDA grantees within the WDA. Non-WDA grantees should offer their equipment to other non-WDA grantees within the WDA. Departures from this sequence must be justified in writing; or
  - (c) If no such program is found, the equipment may be sold.
- (5) Where property was purchased only partly out of DWS funds and the unit acquisition cost of the equipment was \$5,000 or more, the same disposition standards will apply. The amount of reimbursement to DWS shall be computed by applying the sales proceeds with the percentage of DWS funding in the original cost.

- b. **Unit Acquisition Cost of less than \$5,000.** The provisions for the disposition of property with a unit acquisition cost of less than \$5,000 are as follows:

- (1) Prior approval from DWS is not required.

- (2) The sale of such equipment that is no longer needed shall be an action of last resort. Before such sale is made, the grantee shall take the following steps that are listed in priority ranking:
        - (a) Transfer the equipment to other DWS-funded programs within the WDA;
        - (b) Transfer the equipment to other DWS-funded programs in other WDAs within the state; or
        - (c) If no such program is found, the equipment may be sold.
    - c. **Proceeds from Disposition of DWS-funded Property.** Funds received from the sale of any DWS-funded property are program income and shall be subject to requirements of program income in Section F. of this chapter.
    - d. **Documentation.** The disposition of all DWS property and property transferred from other programs must be fully documented.
  4. **Real Property.** Grantees are not allowed to purchase real property for grant purposes, unless specifically authorized by that funding source. Real property is defined in Chapter I.C. The following provisions shall apply:
    - a. Grantees must obtain written approval from DWS prior to purchasing real property.
    - b. Title to real property shall vest in the grantee.
    - c. Disposition of real property shall follow written instructions of DWS.
    - d. Grantees must provide DWS with the location of the real property and the federal share of the acquisition cost.
- J. **AUDIT AND AUDIT RESOLUTION.** The grantee shall comply with the provisions for audit and audit resolution described as follows:
1. **Audit.** The following requirements apply to audits of grantees:
    - a. **Scope.** At a minimum, DWS grantees shall be subject to preliminary fiscal reviews and financial and compliance audits. DWS reserves the right to conduct other audits and investigations in accordance with applicable federal and state laws or regulations.
      - (1) New grantees contracting with DWS must have a preliminary fiscal review to determine the adequacy of a grantee's accounting system, controls and procedures. DWS will conduct these reviews. Grantees must conduct similar reviews of new subgrantees.
      - (2) Grantees that are units of government or nonprofit organizations shall have an audit that:
        - (a) Is on an annual basis, coinciding with the grantee's normal fiscal year. DWS may authorize a biannual audit period; and
        - (b) Is timely submitted to DWS upon completion. DWS may authorize an extension of the submittal date; and
        - (c) Is an agency-wide audit that includes financial and compliance coverage of the DWS program within its scope; and
        - (d) Complies with U.S. General Accounting Office's Government Auditing Standards; and
        - (e) For local units of government, complies with State Single Audit Guidelines issued by the Wisconsin Department of Administration. The audit report is due nine months after the grantee's year end; and

- (f) For nonprofit organizations, complies with the Provider Agency Audit Guide. The audit report is due six months after the grantor's year end; and
      - (g) Complies with OMB Circular A-133 (2003 revision) for grantees that are nonprofit organizations, institutions of higher education, or units of State and local governments. Compliance Supplements must also be used, if applicable.
    - (3) Grantees that are commercial organizations shall have an audit that:
      - (a) Is usually performed annually, but not less frequently than every two years; and
      - (b) Is completed within nine months after the end of the period covered by the audit and submitted to DWS upon completion; DWS may authorize an extension of the submittal date; and
      - (c) Is either a grant-specific audit or an agency-wide audit. This audit must include coverage of the DWS program within its scope. The audit must be conducted and prepared in accordance with generally accepted government auditing standards.
    - (4) DWS may, at its option, waive audit requirements for grantees receiving under \$300,000 of federal funds annually.
    - (5) Compliance with the audit requirements listed in this paragraph do not limit the ability of authorized state or federal agencies to make or contract for additional audits, evaluations or reviews, including regular monitoring of program activities.
  - b. Procurement of Audit Services.** A competitive procurement process in accordance with the WDA's procurement procedures and Section H. of this Guide must be used to select the auditor.
  - c. Audit Costs.** The DWS grantee shall be responsible for the cost of the audit.
- 2. DWS Audit Resolution.** The following are the requirements of grantee audit resolution:
- a. Audit Report.** Prior to DWS's audit resolution process, the audit must be completed through the final report. This report is a public document.
  - b. Audit Resolution Process for DWS Grantees.** The final audit report initiates DWS's audit resolution process as follows:
    - (1) The grantee must submit its audit report to DWS within 9 months after the end of the audit period. DWS may authorize an extension of the submittal date.
    - (2) Upon receipt of the audit report, DWS will issue a letter to the grantee requesting a review of the report and a reply indicating the corrective action to be achieved. The grantee will have 30 days in which to respond to this request.
    - (3) Based on the grantee's response to the audit report, DWS will issue a Statement of Findings and Determinations. This also is a public document. Debts due to audit disallowance are established at this point.
    - (4) A grantee that wishes to contest these findings may enter into the formal complaint/grievance procedure by filing a written complaint/grievance or appeal with DWS according to Section S. of this Chapter.

3. **Subgrantee Audit Resolution.** The audit and audit resolution process for subgrantees is independent of the process between DWS and grantees. The following are the requirements that grantees shall perform for subgrantee audit resolution:

a. **Audit Register.** The grantee must maintain an audit register indicating:

- (1) The subgrantees that are required to submit an audit report to them.
- (2) The grant number, award amount, audit year, findings, audit resolution status, and other relevant data for each subgrantee.

b. **Audit Resolution Process for Subgrantees.** The final audit report initiates the grantee's audit resolution process as follows.

- (1) The grantee must obtain the subgrantee's final audit report within 9 months after the end of the subgrantee's audit period. The grantee may authorize an extension of the submittal date.
- (2) The grantee must resolve all findings related to its programs within 6 months of receipt of the final report. The resolution documents must include:
  - (a) A written corrective action plan.
  - (b) A schedule of disallowed costs.
  - (c) Appeal procedures.
- (3) The grantee may coordinate the resolution process with the subgrantee's cognizant agency. If the cognizant agency has completed all of the steps in paragraph (3.b. and c.) the grantee may obtain the resolution documentation rather than repeat the process. The grantee must also ensure any required action concerning its programs has been or will be performed, such as implementation of a corrective action plan or collection of disallowed costs.
- (4) The subgrantee audit reports must be formally resolved in writing, even if no findings or questioned costs exist.

c. In cases where the grantee is acting as the cognizant agency for the subgrantee, the following additional steps must be done:

- (1) Review the entire audit report to determine if it meets requirements and is acceptable.
- (2) Coordinate the resolution of all audit findings. Other funding sources are to be contacted, as necessary, to resolve the audit report.

d. Grantees must develop and implement debt collection procedures applicable to its subgrantees. The audit resolution and debt collection procedures must be in writing.

K. **DEBT AND DEBT COLLECTION.** The grantee shall comply with the provisions of debt and debt collection described as follows:

1. **Local Collection Procedures.** Grantees must develop written debt collection procedures. These procedures are to provide for timely collection of debts or attainment of waivers from DOL in coordination with DWS.



2. **Establishment of Debt.** A debt to DWS is established when costs are disallowed in writing by one of the following:
  - a. **Audit.** An audit resolution findings and determinations letter;
  - b. **Ruling.** A complaint and appeal ruling;
  - c. **Report.** A report of an investigation;
  - d. **Closeout.** A grant closeout report;
  - e. **Monitoring.** A monitoring report.
3. **Collection of Debt.** Collection options available to DWS, include but are not limited to, the following:
  - a. **Cash Repayment.** Requiring cash repayment from non federal sources;
  - b. **Withholding Funds.** Withholding from current grant costs an amount equal to the disallowed costs to offset the debt;
  - c. **Noncash Repayment.** Requiring repayment with the use of stand-in costs. Stand-in costs are costs paid from non-federal sources that a grantee proposes to substitute for disallowed costs. In-kind contributions do not qualify as stand-in costs. To be valid substitutions, the proposed stand-in costs must:
    - (1) Have been reported as uncharged program costs under the same title and program year as were the disallowed costs;
    - (2) Have been incurred in compliance with laws, regulations, and contractual provisions governing expenditures;
    - (3) Be accounted for in the grantee's financial system records; and
    - (4) Not result in a violation of cost limitations.
4. **Waiver of Sanctions Relating to Debt.** A waiver of all or a part of the sanctions relating to a grant debt can be obtained. If the United States Department of Labor (DOL) determines that the grantee and the state have demonstrated substantial compliance with the applicable requirements, sanctions against the state may be waived. The state may transfer this waiver to the grantee. All waiver requests must be processed through DWS. The grantee must request the waiver and must demonstrate it has established an adequate subcontracting system that included timely monitoring and audit resolution activities. Waivers will only be issued by the DOL if the misexpenditure of grant funds:
  - a. Occurred at the subgrantee level;
  - b. Was not due to willful disregard, gross negligence, failure to observe accepted administrative standards, or did not constitute fraud; or
  - c. If fraud did exist, it was perpetrated against the grantee and its appeal and debt collection process has been exhausted with no repayment rendered. No waiver will be granted unless DOL determines that further collection action would be inappropriate or would prove futile.
  - d. A waiver request must be accompanied by the resolution reports that established the debt. If the DOL Employment and Training Administration (ETA) Grant Officer is resolving the finding, a request for waiver shall be made prior to the conclusion of the informal resolution period, normally 60 days from the date of the ETA Grant Officer's Initial Determination letter.

5. **Disposition of Collected Debts.** Disallowed costs that are due to serious violations or illegal acts must be remitted to ETA. Remit these funds to DWS, for submission to ETA. In other cases the recovered amounts may be reprogrammed. Documentation relating to the repayment of the liability and reprogramming of the funds should be maintained for review and audit.
  6. **Other Actions.** In accordance with legislation and regulations, nothing in this section shall prevent the following:
    - a. **Responsibility for Subgrantees.** The Workforce Development Area (WDA) being responsible for the actions of the subrecipient;
    - b. **Interest Charges.** The grantee being charged interest on the debt at the rate set by DWS beginning 30 days after the debt is established;
    - c. **Direct Sanctions by DOL.** The DOL imposing sanctions directly on the grantee.
- L. GENERAL PRINCIPLES AFFECTING ALLOWABILITY OF COSTS.** Cost allowability guidelines are stated in OMB A-87, OMB A-122, and Federal Register vol. 65, no.124, dated June 27, 2000. To be allowable, grantee costs must meet the following general criteria:
1. **Necessary and Reasonable.** Be necessary and reasonable for proper and efficient administration of the grant programs, be allocable thereto under these principles, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of the grantee;
  2. **Authorized or Not Prohibited.** Be authorized or not prohibited under federal, state, or local laws or regulations;
  3. **Conform to Limitations or Exclusions.** Conform to any limitations or exclusions set forth in these principles or other governing limitations as to types or amounts of cost items;
  4. **Consistent with Grantee Activity.** Be consistent with policies, regulations and procedures that apply uniformly to other activities of the agency of which the grantee is a part;
  5. **Consistent with Accepted Accounting Principles.** Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances;
  6. **Conform to Cost Sharing or Matching Requirements.** Not be included as a cost or used to meet cost sharing or matching requirements of any other federally financed program in either the current or a prior period unless specifically authorized;
  7. **Net of Credits.** Be net of all applicable credits; and
  8. **Documented.** Be adequately documented.
- M. ALLOCATION OF JOINT COSTS.** The grantee shall comply with the provisions of allocating joint costs described as follows:
1. **Allocable Costs.** Costs are allocable to grants according to the following:
    - a. **Relative Benefits and Consistent Treatment.** A cost is allocable to a particular cost objective, such as a title, program activity, or cost category in accordance with the relative benefits received. A cost is allocable to a grant if it is treated consistently with other costs incurred for the same purpose in similar circumstances and if the following applies:

- (1) The cost is incurred specifically for the grant.
  - (2) The cost benefits both the grant and other work and can be distributed in reasonable proportion to the benefits received.
  - (3) The cost is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.
- b. Avoiding Deficiencies or Restrictions.** Any cost allocable to a particular grant or other cost objective under these principles may not be shifted to other federal grants to overcome funding deficiencies or to avoid restrictions imposed by law or by the terms of the grant.
- 2. Direct Costs.** Direct costs must be charged directly to a particular grant and cost objective.
- 3. Joint Costs (direct shared).** The allocation method used to distribute joint costs must be based on a reasonable measurement of benefit received by each cost objective and shall be supported by a written cost allocation plan, which includes all grantee funding whether or not it originates as a DWS grant. Cost allocation plans must distribute costs based on actual activities. Budget estimates do not qualify as support for final charges. However, the effort required for distributing the cost should not be disproportionate to the amount of costs charged.
- 4. Cost Allocation Plans.** Costs shall be allocated according to the following provisions:
  - a. Written Support.** For audit purposes, a written plan for allocation of costs related to all funding sources is necessary to support the distribution of any joint costs related to the grant. Accounting records must support the final charges allocated by the plan.
  - b. Content.** The allocation plan of the grantee shall cover all joint costs, including costs to be allocated under plans of other organizational units, which are to be included in the costs of DWS programs. The cost allocation plan shall be presented in a single organization-wide document. The allocation plan shall contain, but not necessarily be limited to, the following:
    - An organization chart of the agency.
    - A listing of all programs administered by the agency.
    - A description and explanation of the activities/services performed by the agency.
    - The procedures used to identify and a listing of all allocated costs.
    - The methods and justification used in distributing costs, including examples of the allocation.
    - If a governmental agency, description and basis of services provided.
    - Certifications that the plan is in accord with OMB A-87.
    - Other data as required by the grant agreement.
  - c. Methodology.** The cost allocation methodology must be consistent with GAAP and applicable OMB Circulars and be accepted by the grantee's independent auditors.

5. **Administrative Cost Pool.** Administrative costs may be pooled according to the following provisions:

- a. **Amounts Pooled.** Grantees may choose to pool all of their administrative funds. Where this is done, the administrative cost pool must include all of the costs of administration for DWS programs. Only actual allowable, not budgeted, administrative costs may be charged to the administrative cost pool.
- b. **Distribution to Fund Source.** Where an administrative cost pool is used, the pool must be distributed among the various funding sources for reporting purposes. While the method of distribution need not meet the normal criteria for cost allocation, the method used shall be in writing and shall be applied consistently from period to period.
- c. **Distribution to Programs.** For federal reporting purposes, administrative costs, which are initially charged to an administrative cost pool, must be allocated based on the benefits received by each program.

N. **THE DWS POLICY ON INDIRECT COST RATES.** The grantee must comply with DWS policies on indirect cost rates described as follows:

- 1. **For All DWS Grantees Other than WDBs.** DWS-funded State agencies and other grantees will often have indirect cost rates or methods already approved by a cognizant federal agency. In these cases, DWS will review that rate or method and approve an indirect cost rate that may not exceed the indirect cost rate approved by the cognizant federal agency. DWS will not review and approve an indirect cost rate if there is no such rate approved by a cognizant federal agency; those grantees requesting to use an indirect cost rate must obtain it from a federal cognizant agency.
- 2. **For WDBs.** Administrative Entities must comply with the following provisions on indirect cost rates:
  - a. **Administrative Entities with Previously Approved Rates.** Some WDBs may select administrative entities that have indirect cost rates already approved by a cognizant federal agency. In those cases, the DWS will review the cognizant federal agency's rate and approve a rate for indirect costs for grants that may not exceed the federally approved rate.
  - b. **Administrative Entities Requesting Approved Rates.** DWS will provide technical assistance and will review and approve the indirect cost rates for agencies that do not have indirect cost rates but wish to obtain a rate. Only allowable costs shall be included in the indirect cost pool. The cost of auditing the indirect cost rate, which is separate from the regular audit, must be borne by the WDB.
- 3. **For Subgrantees.** DWS grantees are responsible for approving any indirect cost rates or methods they wish to accept for their subgrantees. If the DWS has already accepted an agency rate or method, the grantee may automatically accept it.

O. **STANDARDS FOR SELECTED ITEMS OF COST.** This section provides principles to be applied in establishing the allowability of certain items of cost. The grantee shall comply with these principles whether a cost is treated as direct, joint or indirect. Failure to mention a particular item of cost is not intended to imply that it is unallowable. DWS may give written authorization to incur costs that would otherwise be unallowable, provided that no violation of applicable regulations occurs. The items of cost generally refer to those incurred by the grantee as an agency, rather than incurred directly for a participant.

1. **Accounting.** The cost of establishing and maintaining accounting and other information systems required for the management of DWS programs is allowable. This includes costs incurred by central service agencies for those purposes.
2. **Advertising and Public Relations.** Advertising costs include the costs of media services and associated costs. Media advertising includes magazines, newspapers, radio and television programs, direct mail, convention exhibits, and the like. The only advertising costs allowable are those which are for:
  - a. Recruitment of personnel required for DWS funded programs;
  - b. Procurement of goods and services;
  - c. Disposal of surplus materials;
  - d. Specific requirements of DWS programs;
  - e. Participant and employer outreach, or
  - f. Public relations. This includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public. The only public relations costs allowable are for:
    - (1) costs required by the grant;
    - (2) costs of communicating specific activities or accomplishments of the grant, or
    - (3) costs of communicating matters of public concern such as grant awards or financial matters.
3. **Advisory councils.** Costs incurred by WDBs, local boards, advisory councils, or delegate committees for functions relative to DWS programs are allowable.
4. **Alcoholic beverages.** Costs of alcoholic beverages are unallowable.
5. **Audit services.** Financial and compliance audit costs incurred by the grantee are allowable if the audit is procured and performed in accordance with grant requirements.
6. **Automated data processing.** The cost of data processing services is allowable.
7. **Bad debts.** Any losses, whether actual or estimated, arising from uncollectible accounts and other claims, are unallowable.
8. **Bonding.** Costs of fidelity bonding insurance for individuals involved with DWS programs are allowable.
9. **Budgeting.** Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Identifiable and documented costs for services of a central budget office are allowable if it actively participates in the DWS grant budget process.
10. **Communication.** Costs incurred for telephone services, local and long distance telephone calls, telegrams, Email, fax, postage, and the like are allowable, including installation of a new communications system, which is necessitated by the addition or expansion of DWS programs.
11. **Compensation for personal services.** Standards applicable to compensation for personal services expenditures:

- a. General.** Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that total compensation for individual employees meets the requirements found in subparagraphs (1) - (3) below.
- (1) Compensation is reasonable for the services rendered. Compensation for employees engaged in DWS activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the agency or of similar local agencies.
  - (2) Compensation follows an appointment made in accordance with agency policy, state and local rules and laws, or other requirements, where applicable.
  - (3) Compensation is determined and supported as provided in paragraphs d. and f. of this subsection.
- b. Fringe benefits.** Fringe benefits are allowances and services provided by grantors to their employees in addition to regular salaries and wages and are allowable to the extent that total compensation for employees is reasonable. Examples of allowable employee benefits include, but are not limited to, those listed in subparagraphs (1) and (2) below:
- (1) Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like if they are provided pursuant to an established leave system. The cost must be equitably allocated to all related activities, including grant programs;
  - (2) Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, worker's compensation insurance, retirement plans for staff, and the like provided such benefits are granted under established plans. The cost must be equitably allocated to all related activities, including grant programs.
- DWS funds may not be used for contributions to retirement systems or plans on behalf of any program participant.
- c. Leave accounting.** Compensation for employee leave time, such as vacation or sick leave is allowable. The cost of paid leave may be charged in one of two ways:
- (1) If the leave is accrued or funded, costs may be expensed as leave is earned. If leave is funded, the balance will be considered cash on hand for computation of "excess cash".
  - (2) If leave is accounted for on an unfunded, or cash basis, costs may be expensed as individuals take their paid leave. Agencies with unfunded systems should be aware of the unfunded liability that accumulates when staff does not take earned leave, such as vacations.
- d. Special considerations.** Certain conditions require special consideration and possible limitations in determining costs where amounts or types of compensation appear unreasonable. Among such conditions are the following:

- (1) Determination should be made that cost is reasonable for the actual personal services rendered when compensation is made to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof;
  - (2) DWS may review any change in a grantee's compensation policy resulting in a substantial increase in the grantee's level of compensation.
  - e. **Severance pay.** Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by law, employment agreement, or established written policy. Actual severance payments (but not accruals) associated with normal turnover are allowable. Settlements are negotiated payments made upon termination or as a result of a grievance and are not allowable. Allowable payments shall be allocated to all activities of the grantee.
  - f. **Payroll and distribution of time.** Amounts charged to grants for personal services shall be based on payroll records documented in accordance with generally accepted practices. Time and attendance or equivalent records shall support payroll records for individual employees. Salaries and wages of employees chargeable to more than one cost objective shall be supported by appropriate cost distribution records. The method used shall produce an equitable distribution of time and effort, and:
    - (1) Where time distribution reports are used, these reports shall reflect actual activity of each employee. Budget estimates determined before the services are performed do not qualify as support for charges to grants.
    - (2) Where time distribution reports are used, they shall be signed by the individual employee, or by a supervisor having knowledge of the activities performed by the employee, attesting that the distribution of activity is an accurate statement of the actual work performed by the employee during the periods covered by the reports.
    - (3) Each report shall account for the total activity for which the employee is compensated and which is required in fulfillment of their obligations to the organization.
    - (4) Salaries and wages of employees used in meeting cost sharing or matching requirements on awards shall be supported in the same manner as salaries and wages claimed for reimbursement from granting agencies.
- 12. Contingency provisions.** Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening are unallowable. The term "contingency reserve" excludes self-insurance reserves and pension funds and reserves for normal severance pay.
- 13. Contributions and donations.**
- a. **Contributions and donations made.** Funds paid by the grantee to others are unallowable.
  - b. **Contributions and donations received.**
    - (1) Professional and technical personnel, consultants, and other skilled and unskilled labor may furnish donated (volunteer) services to the grantee. The value of these services is not reimbursable, either as a direct or indirect cost.

- (2) Donated goods or use of space may be furnished to a grantee. The value of the goods and space is not reimbursable, either as a direct or indirect cost. However, depreciation or use allowances may be charged on donated assets in keeping with the provisions in subsection 15 of the current section.

**14. Defense and Prosecution of legal claims.** Costs incurred for any criminal, civil or administrative proceeding commenced by the Federal Government or a State, local, Indian tribal, or foreign government are not allowable if the proceeding relates to a violation of, or failures to comply with, a Federal, State, local, Indian tribal, or foreign statute or regulation by the governmental unit, including its agents and employees.

**15. Depreciation and use allowances.**

- a. **Allowability.** Reimbursement for the use of buildings, capital improvements, leasehold improvements, and equipment is allowable through use allowances or depreciation.
- b. **Basis.** The computation of use allowances or depreciation shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The acquisition cost of an asset donated to the organization by a third party shall be its fair market value at the time of the donation.
- c. **Computation.** The computation of use allowances or depreciation will exclude:
  - (1) The cost of land;
  - (2) The cost or any portion of the cost of buildings, leasehold improvements, and equipment provided or donated directly or indirectly by the Federal Government; and
  - (3) Any portion of the cost of buildings and equipment contributed by or for the organization in satisfaction of a statutory matching requirement.
- d. **Use Allowance Method.** Where the use allowance method is followed, the use allowance will be computed in accordance with current federal guidelines.
- e. **Depreciation Method.** Where the depreciation method is followed, adequate property records must be maintained and a physical inventory must be taken annually to ensure that assets exist and are usable. Any generally accepted method of computing depreciation may be used. The method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs. Adequate depreciation records indicating the amount of depreciation taken each period must also be maintained.
- f. **Limits.** When the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that would be viewed as fully depreciated. However, a reasonable use allowance may be negotiated for such assets after taking into consideration the amount of depreciation previously charged, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the use of the asset.



- 16. Employee morale, health, and welfare.** Costs of internal publications, health or first aid clinics, recreational activities, employee counseling services, and other expenses incurred in accordance with the grantee's established practice for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable.
- 17. Entertainment.** Grantee staff costs for amusement, diversion, social activities, ceremonials, and related costs such as meals, lodging, rentals, transportation, gratuities, and alcoholic beverages are unallowable.
- 18. Equipment and other capital expenditures.**
- a. Expenditures for equipment with a unit acquisition cost of \$1,000 or more but less than \$5,000 are allowable.
  - b. Expenditures for equipment with a unit acquisition cost of \$5,000 or more are only allowable with the prior written approval of the DWS.
  - c. All lease purchase agreements with a total unit acquisition cost of \$5,000 or more require the prior written approval of the DWS.
  - d. Capital expenditures for land or buildings are only allowable with the prior written approval of the DWS. Certain funding sources do not allow the purchase of land or buildings.
  - e. Capital expenditures for improvements to land, buildings (including leasehold improvements), or equipment that materially add to the value of the property or appreciably prolong its life, are only allowable with the prior written approval of the DWS.
  - f. See subsection 15 of the current section for allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see subsection 51 of the current section for allowability of rental costs for land, buildings, and equipment.
- 19. Fines and penalties.** Costs of fines, penalties, damages, and other settlements resulting from violations of or failure of the grantee to comply with Federal, State, and local laws and regulations are unallowable.
- 20. Fringe Benefits.** Fringe Benefits as a part of employee compensation are allowable. Costs must be reasonable in proportion to the amount of compensation earned.
- 21. Fund raising and investment management.**
- a. **Fund Raising.** Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, along with any indirect costs related to those expenses, are unallowable. Costs associated with the WDB's right to solicit and accept contributions and grant funds from other public and private sources are not considered 'Fund Raising'.
  - b. **Investment Management.** Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable. Costs associated with investments covering retirement, self-insurance, or other such funds are not considered 'Investment Management'.

**22. Gains and losses on disposition of depreciable property.**

- a. Recognition.** Gains and losses on the sale, retirement, or other disposition of depreciable property are allowable and shall be included in the year in which they occur and recognized as credits or charges to the appropriate expenditure accounts. The amount to be recognized is the difference between the amount realized on the property and the undepreciated basis of the property.
- b. Restrictions.** Gains and losses are unallowable when:
  - (1) The gain or loss is processed through a depreciation reserve account and is reflected in the depreciation allowable under subsection 15 of the current section.
  - (2) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.
  - (3) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 27.d. of the current section.
  - (4) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with subsection 15 of the current section.

**23. General government expenses.** The salaries and expenses, including meeting per diems, of the chief elected official of a unit of government and salaries and expenses of local governmental bodies, such as county supervisors, city councils, and school boards, are considered a cost of general local government and are unallowable.

**24. Goods or services expended for personal use.** Costs of goods or services for employee personal use are unallowable.

**25. Housing and personal living expenses.** Costs of housing and personal living expenses as a fringe benefit for employees are not allowable, unless approved by the awarding agency.

**26. Idle facilities and idle capacity costs.** The costs of idle facilities and idle capacity such as costs for maintenance, repair, housing, rent, and other related costs (e.g., property taxes, insurance, and depreciation or use allowances) are allowable only with the prior written approval of the DWS.

**27. Insurance and indemnification.** Insurance includes insurance that the grantee is required to carry, or which is approved under the terms of the grant and any other insurance that the grantee maintains in connection with the general conduct of its operations. This subsection does not apply to insurance that represents fringe benefits for employees. This subsection applies as follows:

- a.** Costs of insurance required or approved by the grantor and maintained pursuant to the grant are allowable.
- b.** Costs of insurance maintained by the grantee in connection with the general conduct of its operations are allowable subject to the following limitations:
  - (1) Types and extent of coverage shall be in accordance with grantee policy and sound business practice. Rates and premiums shall be reasonable under the circumstances.
  - (2) Costs of insurance or of any contributions to a reserve covering the risk of loss or damage to government property are allowable to the extent that the grantee is liable for such loss or damage.

- (3) Provisions for a reserve under a self-insurance program approved by the grantor are allowable to the extent that types of coverage, extent of coverage, rates, and premiums would have been allowed had insurance been purchased to cover the risks.
  - (4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation.
  - (5) Costs of audit exception (errors and omissions) insurance are unallowable.
  - c. Costs of personal liability insurance for WDB members are allowable. Personal liability insurance for CLEOs and their support staff is an allowable cost if the following conditions are met:
    - (1) The affected CLEOs provide evidence that their current general liability coverage, required as a standard cost to the general unit of local government which they represent, is insufficient to provide adequate protection for liability incurred as a result of their actions as public officials under DWS grants; and
    - (2) The affected CLEOs assure and certify that DWS grant funds utilized for the purpose of purchasing personal liability insurance for themselves and their support staff does not and will not supplant local funds which otherwise would have been available to purchase such liability insurance; and
    - (3) DWS funds authorized and utilized for the purchase of personal liability insurance for CLEOs and/or their support staff, or both, shall not exceed the cost of including local officials as other insured under a WDB personal liability insurance policy.
  - d. Actual losses which could have been covered by permissible insurance (through the purchase of insurance or a self-insurance program) are allowable for:
    - (1) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice.
    - (2) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of operations.
- 28. Interest.** Costs incurred for interest, however represented, are unallowable, unless noted below. The cost of interest paid or accrued to an external party where associated with the following assets is allowable, provided the assets are used in support of a DWS grant and the total cost (including depreciation or use allowances, operation, maintenance and repair costs, insurance, property taxes, and other allowable costs) does not exceed the rental cost of comparable assets in the same locality.
- a. **Buildings and Leasehold Improvements.**
  - b. **Major Reconstruction and Remodeling.** Major reconstruction and remodeling of existing buildings and leasehold improvements.
  - c. **Equipment.** Acquisitions or fabrication of costing \$5,000 or more, with the prior written approval of the DWS.

- 29. Labor relations costs.** Costs incurred to maintain satisfactory relations between the organization and its employees are allowable. Costs may include publications, training, and related activities.
- 30. Lobbying.** The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is unallowable.
- 31. Losses on other awards.** Any excess of costs over income on any award is unallowable as a cost of any other award.
- 32. Maintenance and repair.** Costs incurred for necessary maintenance, repair, or upkeep of buildings, leasehold improvements and equipment (including government property unless otherwise provided for), which neither add to the value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements that add to the value of the buildings and equipment or appreciably prolong its intended life shall be treated as capital expenditures in accordance with subsection 18 of this section.
- 33. Materials and supplies.** The costs of materials and supplies necessary to operate a grant are allowable. Withdrawals from internal stores or stockrooms should be charged at cost under any recognized and consistently applied method of pricing. Materials and supplies charged as a direct cost should include only the materials and supplies actually used for the performance of the grant.
- 34. Meetings and conferences.** Costs for conducting meetings and conferences are allowable. Costs may be for renting facilities, postage, advertising, meals, fees, and related items.
- 35. Memberships, subscriptions, and professional activities.**
- a. Memberships.** Costs of the grantee's membership in civic, business, technical, and professional organizations are allowable, provided that:
    - (1) the benefit from the membership is related to a DWS grant;
    - (2) the expenditure is for grantee membership;
    - (3) the cost of the membership is reasonably related to the value of the services or benefits received; and
    - (4) the expenditure is not for membership in an organization that devotes a substantial part of its activities to lobbying.
  - b. Subscriptions.** Costs of the grantee's subscriptions to civic, business, professional, and technical periodicals are allowable, when related to a DWS grant.
  - c. Conduct of meetings and conferences.** Costs associated with the conduct of meetings and conferences, including the cost of renting facilities, meals, speakers' fees, are allowable when the meeting or conference is related to the grant program.
  - d. Attendance at meetings and conferences.** Costs of attendance at meetings and conferences sponsored by others when the primary purpose is the delivery of technical information are allowable. This includes costs of lodging, meals, transportation, and other items incidental to such attendance. These costs must be consistent with regular practices followed for other activities of the grantee.

- 36. Organization costs.** Costs of establishing or reorganizing an agency are allowable, if prior approval is obtained from the awarding agency. These costs may include fees for legal, accounting, consulting, or other services. Grant implementation or plan preparation activities of an existing agency are not considered 'Organization Costs'.
- 37. Overtime pay.** Staff compensation costs for overtime, shift premium, and similar pay are allowable.
- 38. Page charges for professional journals.** These costs at normal publisher rates are allowable.
- 39. Participant support costs.** These costs for program participants are allowable with prior approval of the awarding agency. Inclusion in any authorized program plan constitutes prior approval. Costs may be made directly to participants or indirectly to the providers. Costs may be for general subsistence, travel, child care, and other training related purposes.
- 40. Patent costs.** The costs to obtain a patent are allowable if necessary for the award.
- 41. Pension plans.** Costs incurred that are in accord with agency policy are allowable. Costs must be reasonable in relation to compensation earned. Costs for DWS program participants are not allowable.
- 42. Plant security costs.** Costs incurred for wages and equipment for facilities protection are allowable.
- 43. Preaward costs.** Costs incurred prior to the effective date of the grant or contract, are allowable only with prior written approval of the grantor. Costs related to preparation of program plans, applications, and budgets required by DWS are not 'Preaward Costs'.
- 44. Professional services.**
- a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the grantee, are allowable when reasonable in relation to the services rendered.
  - b. The cost of legal expenses required in the administration of grants is allowable.
  - c. Costs such as incorporation fees, brokers' fees, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the grantee, for establishment or reorganization of a grantee, are addressed in Subsection 36.
- 45. Proposals.** Costs incurred in preparing proposals for potential grant agreements are unallowable. Costs related to preparation of program plans, applications, and budgets required by DWS are not considered 'Proposal Costs'.
- 46. Publication and printing.** Publication costs, including printing, distribution, promotion, mailing, and general handling are allowable.
- 47. Rearrangement and alteration.** Costs incurred for ordinary or normal rearrangement and alteration of facilities, and for special arrangement and alteration costs incurred specifically for the project, are allowable.
- 48. Reconversion.** Costs incurred in the restoration or rehabilitation of facilities to approximately the same condition existing immediately prior to the effective date of a DWS-funded grant are allowable.

**49. Recruiting costs.** Costs for advertising, testing, hiring, training, and evaluating employees/potential employees are allowable. Costs must be reasonable for the organization.

**50. Relocation costs.** Costs for the relocation of employees are allowable. Costs must be in accord with written policy of the employer.

**51. Rental costs.** Subject to the limitations described in a. through c. below, rental costs to the extent that the rates are reasonable are allowable. Reasonableness of costs considers such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.

**a. Sale and leaseback.** Rental costs under sale and lease back arrangements are allowable only up to the amount that would be allowed had the grantee continued to own the property.

**b. Non-independent leases.** Rental costs under non-independent leases up to only an amount equal to the applicable facility operating expenses (FOE) when the title to the property vested in the grantee are allowable. However, an amount based on fair market value (FMV) can be allowed if it can be shown that this amount is a reasonable approximation of cost. Furthermore, all such leases, lease renewals, and costs are allowable only with prior written approval of the DWS. The grantee shall also provide, for DWS review, the proposed lease agreement along with sufficient detailed documentation in support of FOE and FMV, as necessary:

For this purpose, a non-independent lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between the following:

- (1) Divisions of a grantee agency;
- (2) Organizations under common control through common officers, directors, or members; and
- (3) A grantee and a director, trustee, officer, or key employee of the grantee or his immediate family, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. See also Section H.2.

**c. Creation of Material Equity.** Rental costs under leases which create a material equity in the leased property, including any interest charges, are allowable only up to the amount which would be allowed had the grantee purchased the property on the date the lease agreement was executed. For this purpose, a material equity in the property exists if the lease is noncancelable or is cancelable only upon the occurrence of some remote contingency and includes one or more of the following characteristics:

- (1) The grantee has the right to purchase the property for a price, which at the beginning of the lease appears to be substantially less than the probable fair market value at the time it is permitted to purchase the property, commonly called a lease with a bargain purchase option;
- (2) Title to the property passes to the grantee at some time during or after the lease period;

- (3) The initial term of the lease plus periods covered by any renewal options is equal to 75 percent or more of the economic life of the leased property. In this subparagraph, "economic life" means the period the property is expected to be economically usable by one or more users.
- 52. Royalties.** The cost of obtaining patents or copyrights if necessary for the performance of the award is allowable.
- 53. Selling and marketing.** The cost of selling any product or service of the agency when necessary for the performance of the award is allowable.
- 54. Severance pay.** This is compensation in addition to earned wages for employees that are being terminated. These costs to the extent permitted by law or by written policy of the agency are allowable. Costs must be reasonable in relation to wages earned. (See also Chapter III, O.11.e. of this Guide.)
- 55. Specialized service facilities.** The cost of specialized, complex facilities when necessary for the performance of the award is allowable.
- 56. Staff Training and Education.** The cost of employee development training, which directly or indirectly benefits grant programs, is allowable.
- 57. Taxes.** In general, taxes or payments in lieu of taxes that the agency is required to pay are allowable, except for:
- Taxes from which exemptions are available;
  - Special assessments on land which represent capital improvements;
  - Federal income taxes; and
  - State income taxes.
- 58. Termination.** The termination of a grant may require the incurring of costs, or the need for special treatment of costs, which would not have occurred had the grant not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this section in termination situations, subject to the availability of funds.
- The cost of items reasonably usable in the grantees other work are unallowable unless the grantee submits evidence that it would not retain such items at cost without sustaining a loss.
  - If certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable, but only up to the amount of the grant. Such costs continuing after termination due to the negligent or willful failure of the grantee to discontinue such costs shall be unallowable.
  - Loss of useful value of special tooling, machinery, and equipment that was not charged to the grant as a capital expenditure is generally allowable if not reasonably capable of use in the other work of the grantee.
  - Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated grant less the residual value of such leases, if:
    - The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the grant and such further period as may be reasonable, and

- (2) The organization makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the grant and of reasonable restoration required by the provisions of the lease.

e. Settlement expenses including the following are generally allowable:

- (1) Accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to the grantor of settlement claims and supporting data with respect to the terminated portion of the grant, unless the termination is for default, and for the termination and settlement of subgrants.
- (2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the DWS or acquired or produced for the grant, except when grantees are reimbursed for disposals at a predetermined amount.

**59. Transportation.** Costs for freight, shipping, and postage are allowable.

**60. Travel.** Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by agency employees who are in travel status on official business. Travel costs are allowable subject to paragraphs a. through c. below, when they are directly attributable to specific work under a grant.

- a. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the agency in its regular operations.
- b. Travel costs of local government officials when specifically related to grant programs are allowable.
- c. Travel costs to a foreign country must be authorized in the grant agreement.

**61. Trustees fees.** The cost for trustees or directors, such as travel or per diem fees, is allowable. Costs must be in accord with written policy of the agency.

**62. Under-recovery of costs.** The excess of costs over revenues on any grant charged as a cost of any DWS-funded grant is unallowable. This includes, but is not limited to, the grantee's contributed portion by reason of cost sharing agreements or any under-recoveries through negotiation of lump sums for, or maximums on, indirect costs.

**P. SUMMARY OF STANDARDS FOR SELECTED ITEMS OF COST.** The matrix which follows summarizes the detailed information which is provided in the preceding section O. regarding standards for selected items of cost and uses the same subsection numbering for items addressed.



# Item of Cost	Allowable	Allowable With Prior DWS Approval	Not Allowable
1. Accounting	X		
2. Advertising and Public Relations	X		X
3. Advisory Councils	X		
4. Alcoholic Beverages			X
5. Audit Services	X	X	
6. Automatic Data Processing	X		
7. Bad Debts			X
8. Bonding	X		
9. Budgeting	X		X
10. Communication	X		
11. Compensation for Personal Services	X		
12. Contingency Provisions			X
13. Contributions and Donations			X
14. Defense of Legal Claims			X
15. Depreciation and Use Allowance	X		
16. Employee Morale, Health, Welfare	X		
17. Entertainment			X
18. Equipment/Capital Expenditures	X	X	
19. Fines and Penalties			X
20. Fringe Benefits	X		
21. Fund Raising/Invest Management	X		X
22. Gains and Losses on Property	X		X
23. General Government Expenses			X
24. Goods for Personal Use			X
25. Housing Costs		X	
26. Idle Facilities and Idle Capacity		X	
27. Insurance and Indemnification	X		X
28. Interest	X		X
29. Labor Relations	X		
30. Lobbying			X
31. Losses on Other Awards			X
32. Maintenance and Repair	X		
33. Materials and Supplies	X		
34. Meetings and Conferences	X		
35. Memberships and Subscriptions	X		X
36. Organization Costs		X	
37. Overtime Pay	X		
38. Page Charges for Journals	X		
39. Participant Support		X	
40. Patent Costs		X	
41. Pension Plans	X		
42. Plant Security	X		
43. Preaward Costs		X	
44. Professional Services	X	X	X
45. Proposals			X
46. Publication and Printing	X		
47. Rearrangement and Alteration	X		
48. Reconversion	X		

# Item of Cost	Allowable	Allowable With Prior DWS Approval	Not Allowable
49. Recruiting	X		
50. Relocation	X		
51. Rental Costs	X		X
52. Royalties	X		
53. Selling and Marketing		X	
54. Severance Pay	X		
55. Specialized Facilities/Services	X		
56. Staff Training and Education	X		
57. Taxes	X		X
58. Termination	X		X
59. Transportation	X		
60. Travel	X		X
61. Trustees Fees	X		
62. Under Recovery of Costs			X

## Q. PARTICIPANT PAYMENTS

### 1. Allowable Payments.

Participant payments generally must be provided for in the grantees local plan in order to be allowable.

### 2. Description of each type of payment.

- a. **Supportive Services.** These are payments for services made to participants to enable the individual to continue a training or education program. Services may be in the form of cash, in-kind, or provided by another agency. Payments may be for reimbursement of specific expenses.
- b. **Needs-Related Payments.** These are payments made to participants to enable the individual to continue a training or education program. Payments may be in the form of general financial assistance.

### 3. General Requirements – Supportive Services.

- a. Supportive services are those services necessary to enable individuals to participate in DWS-funded activities. Services may include transportation, child-care, housing, and other items.
- b. The local board must develop a policy with other one-stop partners on supportive services that ensure resource and service coordination in the local area. The policy should address the method for participant referral to the services. The options for funding of services should also be addressed. Grantees must provide accurate information to participants as a core service.
- c. Supportive services may be provided to participants who are:
  - (1) Participating in core, intensive, or training services; and
  - (2) Unable to obtain supportive services through other programs providing such services.

- d. Supportive services may only be provided when necessary to enable a participant to participate in DWS-funded activities. The WDA may establish limits on supportive services, including a maximum amount of funding and maximum length of time. WDAs may also establish procedures to allow exceptions to these limits.

#### **4. General Requirements – Needs-Related Payments**

- a. Needs-related payments are authorized financial assistance to participants (usually dislocated workers) to enable individuals to participate in training.
- b. To receive needs related payments, a dislocated worker must:
  - (1) Be unemployed, and
  - (2) Have ceased to qualify for unemployment compensation or trade adjustment assistance under TAA or NAFTA-TAA; and
  - (3) Be enrolled in a program of WIA training services by the end of the 13<sup>th</sup> week after the most recent layoff that resulted in a determination of the worker's eligibility as a dislocated worker, or, if later, by the end of the 8<sup>th</sup> week after the worker is informed that a short term layoff will exceed 6 months; or
  - (4) Be unemployed and did not qualify for unemployment compensation or trade readjustment assistance under Trade Adjustment Assistance (TAA) or North America Free Trade Act (NAFTA)-TAA.
- c. Needs-related payments may be paid within 30 days of the start date of a participant's training program. The Governor may extend the 30-day period to meet local needs.
- d. The local board determines the level of needs-related payments. Payments may not exceed the higher of applicable unemployment compensation or the poverty level.

#### **5. Specific requirements.**

- a. The local plan must specify each type of participant payment allowed by the grantee. The plan must also indicate the applicable rates and length of time for such payments. All participant payments must be made in accord with the plan.
- b. The participant employability plan must specify the type of participant payments allowed.
- c. WDAs must have a written description of its participant payment system, including the documentation required, the method of approving payments, and other requirements needed.

### **R. MATCHING REQUIREMENTS.**

- 1. **General Requirements.** The grantee shall comply with the following terms when required by the grant.
  - a. Match expenditures must be allowable grant expenditures not charged to the grant. This includes donated staff time, supplies, equipment, services or real property or the use thereof.

- b. Match expenditures must be financed by non-federal funds, unless specifically exempt.
  - c. Match expenditures must be incurred within the related grant time period.
  - d. Grantees are responsible for generating match based on a percentage of actual grant expenditures incurred.
  - e. The amount of the match requirement is stated in the grant agreement.
  - f. Subgrantees are subject to the same guidelines as the grantees.
2. **Types of Match.** When matching contributions are required under a grant, they may consist of the following:
- a. **Cash Contributions.** This is defined as allowable grant expenses, not claimed to the grant, paid directly with cash contributions. State or local governments, nonprofit agencies, or employers may contribute cash. The sources of cash match may be state or local funds, private funds, or non-federal program income or interest income
  - b. **In-kind Contributions.** This is defined as allowable match expenses, not claimed to the grant, that do not require direct cash outlays by the grantee or subgrantee. The cost may increase goods or services, reduce federal grant costs, or can be donated. The cost may be in the form of depreciation or use allowances for equipment and space. State or local governments, nonprofit agencies, or employers may contribute in-kind match. The sources must be non-federal, unless specifically exempt.
3. **Conditions of Cash and In-kind Contributions.** Cash and in-kind contributions shall be used as part of a matching share requirement under a grant only if the contributions meet all of the following criteria:
- a. **Verifiable.** The costs are verifiable from available records;
  - b. **Unduplicated.** The costs are not included as grant expenditures or as matching contributions for any other federally assisted project;
  - c. **Necessary and Reasonable.** The costs are necessary and reasonable for proper and efficient accomplishment of grant objectives;
  - d. **Allowable as Costs.** The costs are allowable under the grant provisions.
4. **Establishing Values as Cash Match.** Values for cash contributions will be established as the actual cost incurred.
5. **Establishing Values of In-kind Match.** Values for In-kind match are set forth below:
- a. **Staff Services.** Volunteer services not paid to the employee shall be valued at rates that are consistent with those paid for similarly skilled work for the agency or area. Volunteer staff services that are paid to the employee with non-federal funds shall be valued at the actual wage rate.
  - b. **Services to participants.** Services to participants that are not cash match are valued at actual cost.
  - c. **Supplies, Equipment, Space.** The value of donated supplies, equipment, and space may not exceed the fair value of similar items at the time of their donation.

- d. **Depreciation and Use Allowances.** Depreciation and use allowances for donated equipment and real property may be made in accordance with other provisions of this section and Chapter III.O.15. of this Guide.
6. **Records of Non-federal, In-kind Contributions.** Volunteer services must be documented and supported by the same methods used by the agency for its employees. The basis for determining the valuation for match expenditures must be documented.
7. **Match Reporting Requirements.** Match expenditures are reported to DWS in accord with the grant agreement. Grantees must develop internal match accounting systems.
8. **Unallowable Match.**
- a. **Federally Funded Activity.** Costs paid by another federal grant are not allowable unless exempt. Costs funded by program income earned from federal sources are not allowable.
  - b. **Severance Pay or Extended Benefits.** Costs from an employer who has recently laid off a participant, since this was wages earned by the participant apart from their participation in the program, are not allowable.
  - c. **Wages.** Costs earned by a participant while the participant is enrolled in a training program are not allowable. The employer portion of wages and fringe benefits paid as part of a training program are also not allowable.
  - d. **Construction or Donation of Buildings.** Costs paid for real estate are not allowable.
  - e. **Other Personal Funds.** Costs used by participants to support themselves during the program are not allowable.
  - f. **Unallowable Grant Expenditures.** Grant expenditures that are unallowable incurred outside the grant time period or undocumented is not allowable as match.
9. **Federal Reference for Match.** Grantees shall comply with Common Rule 29 CFR 97.24 for match requirements.

## **S. COMPLAINTS/GRIEVANCES AND APPEALS.**

These are the procedures DWS grantees/contractors, employees, applicants for or participants in DWS-funded programs, and other parties affected by the operations of DWS-funded programs shall use to resolve complaints/grievances and appeals regarding alleged violations of DWS grants, its related regulations, applicable Wisconsin statutes, other applicable federal or state requirements, the provisions of this document or the terms of a DWS grant agreement or contract.

1. **General Requirements** for processing complaints/grievances and appeals.
- a. **Program and Grant Responsibilities.** DWS grantees shall establish and maintain complaint/grievance and appeal procedures that conform to DWD Grant and other applicable federal and state requirements. To be valid, systems for resolving DWD Grantee complaints/grievances must provide for due process.

- (1) The elements of due process:
    - (a) Notice to the parties of the specific charges and the responses of those involved;
    - (b) Reasonable timing;
    - (c) An impartial decision-maker;
    - (d) The right of the parties to representation;
    - (e) The right of each party to present evidence both in writing and through witnesses;
    - (f) The right of each party to question others who present evidence; and
    - (g) A decision made strictly on the recorded evidence.
  - (2) The grantees must:
    - (a) Describe their complaint/grievance and appeal procedures in their DWD grant agreements.
    - (b) Assure that their subgrantees are informed of and maintain procedures consistent with the requirements of this section.
    - (c) Require that every employer who hires participants under DWS-funded programs shall maintain complaint/grievance and appeal procedures, which include the employer's terms and conditions of employment as described in WIA Title I Section 122 (h)(1) and applicable collective bargaining agreements.
    - (d) Follow their own written procedures in resolving WIA Title I complaints/grievances at the local level.
    - (e) Post complaint/grievance and appeal procedures in a prominent place(s) and ensure that DWD grant participants are made aware of their rights regarding complaints/grievances, appeals, and hearings.
    - (f) Retain all records about complaints/grievances and appeals for a period of three years or beyond three years if the complaints/grievances and appeals are not resolved or are under audit, investigation, or litigation.
- b. Final Authority on Decisions.** The DWS administrator, on behalf of the Governor, has the final decision-making authority on complaints/grievances arising from the administration, implementation and operation under DWD grants.
- c. Forms for Filing Complaints/Grievances.** The DWS Complaint Information Form must be used for all formal complaints/grievances filed with DWS. Local agencies may modify the form for their own use as long as they comply with basic complaint/grievance filing requirements.
- d. Technical Assistance.** DWS shall provide technical assistance to grantees or other parties needing information on complaint/grievance procedures and related issues.
- e. One Stop Complaint Procedures.** DWS in conjunction with its grantees and other federal financial assistance partners has instituted a Job Center Complaint Coordination System (JCCCS) in all Wisconsin Job Centers. Each Job Center has a Complaint Coordinator. The Coordinators refer complaints, regardless of program fund source, to the appropriate entity within or outside of the Job Center.

**2. Complaint/Grievance Preparation.**

- a. Written and Within One Year.** The complainant shall file a written complaint/grievance within one year after the alleged violation took place.
- b. Addressed to Respondent.** Complaints/grievances should be addressed to the appropriate respondent agency.
- c. Accurate and Complete.** A complaint/grievance must be sufficiently accurate and complete to be evaluated on its own. It is suggested that formal complaints/grievances be notarized.
- d. Establishment of Filing Date.** The filing date of a complaint/grievance is established when a complainant submits a written complaint/grievance that provides:
  - (1) The full name, telephone number (if any), and address of the person(s) or organization(s) making the complaint/grievance;
  - (2) The full name and address of the respondent against whom the complaint/grievance is made;
  - (3) A clear and concise statement of the facts, including pertinent dates constituting the alleged violation;
  - (4) The provisions of the DWD grant, the regulations, or other applicable agreements believed to have been violated;
  - (5) A statement disclosing whether the complaint/grievance has been cross-filed with any other jurisdiction and whether these other proceedings have commenced or been concluded, including dates, authorities, and other pertinent information.
- e. Response by recipient grantee.** The grantee shall acknowledge receipt of a complaint/grievance in writing within five (5) working days. Where possible the file date should be included in the response.

**3. Requirements for Complaints/Grievances Alleging Discrimination.**

- a. Section 188 of Title I of WIA** prohibits discrimination on the basis of age, disability, sex, or on the basis of race, color, or national origin, political affiliation or belief, status as a program participant, or against beneficiaries on the basis of citizenship/status as a lawfully admitted immigrant authorized to work in the United States. Complaints/grievances alleging a violation of WIA Title I s.188 and 29 CFR, Part 37.70 – 37.114, regarding discrimination will be processed as follows:
  - (1) The complaint may be filed either with the United States Department of Labor (DOL) Director of the Civil Rights Center (Director/CRC – the cognizant federal agency for discrimination complaints) or DWS.
  - (2) The Director/CRC, for good cause shown, may extend the filing time deadline. This time period for filing is for the administrative convenience of the Directorate and does not create a defense for the respondent.
  - (3) Any person who elects to file a complaint with DWS shall allow DWS 90 calendar days to process the complaint.

- (4) DWS has adopted procedures which allow any party to a discrimination complainant to request Alternative Dispute Resolution (ADR) or mediation of their complaint. ADR allows disputes to be resolved in a less adversarial manner and is totally voluntary. The complainant may file a complaint with the Director/CRC within 30 days should ADR fail to provide a satisfactory resolution of the complaint. The Equal Rights Division of DWD will provide ADR or mediation for parties requesting this method of resolving discrimination complaints.
- (5) If, by the end of 90 calendar days, DWS has not completed processing the complaint, has failed to notify the complainant of the resolution, or has offered a resolution not satisfactory to the complainant, including ADR, the complainant may, after the 90 calendar days have passed, file a complaint with the Director/CRC by completing and submitting CRC's Complaint Information and Privacy Act Consent Forms. The complaint must be filed no later than 30 calendar days after DWS has issued a final decision or 90 days have passed. In any event, the complaint must be filed with CRC no more than 120 days after the complaint was initially filed.
- (6) The Director/CRC shall, at the conclusion of the investigation, advise the complainant and respondent whether there is reasonable cause to believe that a violation of the nondiscrimination and equal opportunity provisions of a DWS Grant or 29 CFR, Part 37, has occurred.
- (7) A complainant has 180 days to file a discrimination complaint.

**b. Discrimination Based on State Fair Employment Statutes.**

Complaints/grievances alleging a violation of the State of Wisconsin's Fair Employment Statute, 111.31-111.395, Stats., regarding discrimination must be filed with the DWD-Equal Rights Division (ERD) within 300 days after the alleged discrimination took place. Complaints/grievances filed with the DOL-CRC may be cross-filed with the state DWD-ERD. The Fair Employment Statute extends protection to classes not covered under federal law, such as arrest/conviction record, marital status, sexual orientation, military reserve status, and use of lawful products. Complaints/grievances appealed to the Equal Rights Division must be filed using the ERD Discrimination Complaint Form. A link to this form follows: <http://www.dwd.state.wi.us/er/pdfs/ERD-4206a-F.pdf>

**4. Requirements for Complaints/Grievances Alleging Noncriminal Violations other than Discrimination.**

**a. Grantee as Respondent.** When a DWS grantee is a respondent to complaints/grievances about the administration, implementation, and operation of its DWS-funded employment and training programs, the following procedures must be used:

- (1) The complainant shall file a written complaint/grievance within one year after the alleged violation took place.



- (2) The grantee shall review the complaint/grievance to determine if it was filed within the one-year time limit and if it falls within the jurisdiction of the DWD Grantee and WAA. If the criteria are not met, the grantee shall provide the complainant with written notice of the rejection of the complaint/grievance and the reasons for that rejection. If the criteria are met, the grantee shall provide the complainant with written notice of the acceptance. The filing date shall be included in the notice.
- (3) After accepting the complaint/grievance, the grantee shall:
  - (a) Conduct a hearing within 30 calendar days of the filing date; and
  - (b) Issue a decision to the complainant within 60 calendar days of the filing date.
- (4) Format for a written decision.
  - (a) Summary Statement that identifies issue(s) being contested and which caused the hearing to be called. Include citation of law(s), rule(s), regulation(s), policy(ies), and agreements alleged to have been violated.
  - (b) Findings of Facts, which enumerates items the hearing examiner accepts as facts based upon demonstration of support (documentation) from complainant's and respondent's presentation of facts and opinions.
  - (c) Conclusion is a brief summary of the facts, which affirm or deny assertions made by parties at the hearing.
  - (d) Decision should be based on the conclusion(s) and provide a remedy for final resolution.
  - (e) Appeal rights must be included in the written decision. This statement of appeal rights shall include how, where, and how much time the aggrieved party has to appeal the decision.
- (5) After receiving an adverse decision or no decision on a complaint/grievance within 60 calendar days, the complainant may file an appeal requesting a state level independent review. This appeal must be filed with DWS within the following time limitations:
  - (a) The complainant must file the appeal within 10 calendar days after the complainant received the decision; or
  - (b) If the complainant did not receive a decision, the complainant must file the appeal within 15 calendar days after the decision was due.
- (6) After accepting a complaint/grievance that has been appealed from the grantee level requesting a state level review, the DWS administrator, on behalf of the Governor, shall review the case and issue a final decision within 30 calendar days after the appeal was filed.
- (7) **Appeal.** A complaint alleging that DWS, on behalf of the Governor, has not issued a decision within 60 days after a complaint is filed or the party to such decision receives an adverse decision may appeal these issues to the Secretary of Labor. The Secretary shall make a final determination no later than 120 days after receiving such an appeal.

**b. DWS as Respondent.** When DWS is a respondent to complaints/grievances about the administration, implementation, and operation of its DWS-funded employment and training programs, the following procedures shall be used.

- (1) The complainant must file a written complaint/grievance within one year after the alleged violation took place. For a complaint or grievance involving audit resolution, an appeal must be filed between 15 and 30 days after the issuance of the determination letter, as detailed in the letter.
- (2) DWS must review the complaint/grievance to determine if it was filed within the one-year time limit and if it falls within DWS's jurisdiction. If the criteria are not met, DWS shall provide the complainant with written notice of the rejection of the complaint/grievance and the reasons for that rejection. If the criteria are met, DWS shall provide the complainant with written notice of the acceptance of the complaint/grievance.
- (3) After accepting the complaint/grievance, DWS shall:
  - (a) Appoint a hearing examiner;
  - (b) Conduct a hearing within 30 calendar days of the filing date; and
  - (c) Issue a decision to the complainant within 60 calendar days of the filing date.
- (4) After receiving an adverse decision or no decision on a complaint/grievance within 60 calendar days, the complainant may file an appeal requesting a state level independent review. This appeal must be filed with DWS:
  - (a) The complainant must file the appeal within 10 calendar days after the complainant received the decision; or
  - (b) If the complainant did not receive a decision, the complainant must file the appeal within 15 calendar days after the decision was due.
- (5) After accepting the appeal, DWS shall designate a review officer to conduct the state level independent review.
- (6) After reviewing the case file and (if needed) gathering additional information, the Independent Review Officer shall issue a recommended decision to the DWS administrator within 30 calendar days after the appeal was filed. The DWS administrator may accept, reject, or modify the Independent Review Officer's recommended decision.
- (7) The DWS administrator must, on behalf of the Governor, issue a final decision within 30 calendar days after accepting the request for a state level independent review.

**c. Employer/Work-training Provider as Respondent.** When an employer or work-training provider acting under agreement with a DWS grantee/contractor is a respondent to complaints/grievances about the administration, implementation, and operation of DWS-funded employment and training programs, including complaints of unlawful employee displacement by a DWS program participant, the following procedures must be used:

- (1) The complainant shall file a written complaint/grievance within one year after the alleged violation took place.

- (2) The grantee or contracting agency shall review the complaint/grievance to determine if it was filed within the one-year time limit, if it falls within the jurisdiction of the DWD grantee/contractor, and if it meets grievance/complaint criteria under WIA or TANF/W-2. If the criteria are not met, the grantee shall provide the complainant with written notice of the rejection of the complaint/grievance and the reasons for that rejection. If the criteria are met, the grantee/contractor shall provide the complainant with written notice of the acceptance. The filing date shall be included in the notice.
- (3) After accepting the complaint/grievance, the DWS grantee/contractor shall contact the respondent, investigate the complaint, and attempt to reach an informal resolution.
- (4) If an informal resolution cannot be reached, the grantee/contractor shall:
  - (a) Conduct a hearing within 30 calendar days of the filing date.
  - (b) Issue a decision to both the complainant and respondent within 60 calendar days of the filing date.
- (5) Format for written decision.
  - (a) Summary Statement that identifies issue(s) being contested and which caused the hearing to be called. Include citation of law(s), rule(s), regulation(s), policy(ies), and agreements alleged to have been violated.
  - (b) Findings of Facts, which enumerates items the hearing examiner accepts as facts based upon demonstration of support (documentation) from complainant's and respondent's presentation of facts and opinions.
  - (c) Conclusion is a brief summary of the facts, which affirm or deny assertions made by parties at the hearing.
  - (d) Decision should be based on the conclusion(s) and provide a remedy for final resolution.
  - (e) Appeal rights must be included in the written decision. This statement of appeal rights shall include how, where, and how much time the aggrieved party has to appeal the decision.
- (6) After receiving an adverse decision or no decision on a complaint/grievance within thirty calendar days, either the complainant or the respondent (or both) may file an appeal requesting a state-level independent review. This appeal must be filed with DWS within the following time limitations:
  - (a) The complainant and/or respondent must file the appeal within 10 calendar days after they received the decision; or
  - (b) If the complainant and/or respondent did not receive a decision, they must file the appeal within 15 calendar days after the decision was due.

**5. Requirements for Complaints/Grievances Alleging Incidents of Fraud and Abuse Violations of DWS Grants.**

- a. **Notification of Requirements.** All WDAs and other organizations receiving DWS funds shall respectively notify the LEO, WDB members, employees, subrecipients, all DWS grant participants, and the general public of the contents of this subsection.
- b. **Nationwide System for Reporting Incidents.** The DOL-ETA, in conjunction with the Office of Inspector General (OIG) has established a nationwide system to report any suspected or actual incidents of fraud and abuse. Under this system, the following procedures will apply to DWS grant recipients.

- (1) Individuals who become aware of any allegation or complaint/grievance about possible fraud, misfeasance, nonfeasance, or malfeasance, misapplication of funds, gross mismanagement, and employee or participant misconduct involving DWS grant programs or operations should report that information as follows:
    - (a) Staff of WDAs or statewide grantees shall within one working day, file an Incident Report using the DWS Grant Fraud and Abuse Incident Report form and submit it to DWS according to procedures on the back of the form.
    - (b) Staff of program operators other than WDAs or statewide grantees or members of the public may report suspected incidents of fraud and abuse either to the local WDA Administrative Entity or to DWS.
    - (c) It is not the intent of the DOL or DWS to limit use of the Incident Report to elicit information only after an act or allegation has already been determined legally prosecutable. On the contrary, any act that raises questions concerning possible illegal expenditures or other unlawful activity should be reported immediately.
  - (2) Complainants who fear that their positions will be compromised if they submit information through the WDA/DWS reporting system may send an Incident Report directly to the OIG, P.O. Box 1924, Washington, D.C., 20013, or telephone the OIG's hotline that is maintained for public use by individuals who want to report a suspected wrongdoing. The toll free number is (800) 424-5409. The OIG is required to respond to hotline referrals within 30 days.
  - (3) The identity of individuals who provide information will not be disclosed unless they consent or the OIG determines that disclosure is unavoidable during the course of an investigation. The DOL prohibits reprisal against any employee who discloses information about wrongdoing or makes a valid complaint/grievance. Wisconsin's "Whistle Blower Law" provides similar protection for most state employees (230.80-230.89, Stats. & 895.65, Stats.)
- c. **DWS Reports to DOL.** DWS must submit a DOL Incident Report within five working days to the DOL regional administrator, who must immediately refer it to the Regional Inspector General for Investigation for disposition.
- d. **Follow-up on Reports.** Any DWS grantee that has reported an incident of alleged fraud and abuse shall follow up on these cases and work with DWS, appropriate governmental agencies, and, where necessary, law enforcement agencies, such as the district attorney and the Federal Bureau of Investigation, during the investigation and resolution of the case. For any reported incident of fraud and abuse, the affected grantee shall do the following:
- (1) Investigate the matter in question, have it investigated by appropriate authorities, or if requested, assist with official investigations.
  - (2) During the resolution of the allegations, ensure that necessary documents are made available, that witnesses and other parties involved in the incident are contacted, that records are maintained, and that the investigatory process is proceeding smoothly.
  - (3) If the investigation results in disallowed costs, follow the local debt collection process to recover the funds.

- (4) Once a fraud report has been transmitted to DWS, interim reports must be submitted when the status of an investigation changes or the grantee is aware of material changes in the methods of resolving the incident. Once an incident has been resolved, a final report is required to close out the case.
  - e. **DWS Assistance.** On behalf of the Governor, DWS is responsible for overseeing the integrity of DWS grant programs in the state and providing assistance to grantees in the resolution of cases involving allegations of fraud and abuse. DWS will assist in the investigation and resolution of cases as appropriate, monitor progress and prepare applicable reports.
6. **DWS Hearing Process.** DWS will use the following procedures to conduct hearings when it is the respondent in complaints/grievances. Grantees may use these procedures or follow their own procedures if based on the elements of due process previously listed.
- a. **Hearing Request and Response.** The complainant may request a hearing by submitting a written request to DWS. DWS will schedule the hearing within 30 days after the complaint/grievance filing date and provide written notice to both parties, including the date, time, and place; issues to be decided; and relevant background material.
  - b. **Open to Public.** The hearing is informal and is open to the public.
  - c. **Hearing Provisions.** The complainant and the respondent should both attend the hearing. During and prior to the hearing, DWS will apply the following rules:
    - (1) Complainants may amend the complaint/grievance at any time prior to the hearing.
    - (2) Complainants may withdraw the request for a hearing in writing prior to the hearing.
    - (3) Complainants or respondents may request rescheduling of the hearing for good cause within the prescribed 30-day limit.
    - (4) Complainants and respondents may be represented by an attorney or other representative of their choice.
    - (5) Complainants and respondents may bring witnesses and provide/submit documentary evidence.
    - (6) Respondents/grantees and/or subgrantees shall produce requested records or documents relevant to the issues and kept in the ordinary course of business. Both parties may examine all evidence presented at the hearing.
    - (7) Complainants and respondents may question any witnesses or parties to the hearing.
  - d. **Hearing Examiner's Role and Hearing Provisions:**
    - (1) The role of the hearing examiner prior to the hearing:
      - (a) Prepare and review of the case file;
      - (b) Determine the issues involved, affected laws, regulations, or other rules;
      - (c) Formulate a set of questions for use at the informal hearing; and
      - (d) Determine limits of pre-hearing discovery to be allowed.

- (2) The role of the hearing examiner during the hearing:
  - (a) Make a record of the hearing;
  - (b) Ensure that the hearing procedure is followed;
  - (c) Rule on motions (standard courtroom rules of procedure need not apply);
  - (d) Determine the order of witnesses, question witnesses, take testimony, and maintain order; and
  - (e) Accept evidence and/or exhibits during or after testimony and discourage lines of inquiry not relevant to the original complaint/grievance.
- (3) The role of the hearing examiner after the hearing:
  - (a) Not discuss the case with any of the parties;
  - (b) Consider and evaluate all relevant facts, evidence and arguments; and
  - (c) Formulate and transmit a written decision to all parties, including applicable appeal or civil remedies the complainant may pursue.

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## IV. GRANTS

This chapter contains the requirements that govern the policies and procedures for award, modification, and termination of grants awarded by DWS. All DWS grantees and subgrantees must have local written policies that require compliance with applicable portions of this chapter.

**A. PROGRAM PLANS.** Each of the designated WDAs or other grantees shall submit the applicable program plan to DWS in accord with instructions.

1. **Components.** The plans usually consist of:
  - a. Program plan.
  - b. Budget.
  - c. Attachments as required for the specific grant.
2. **Process.** The plan approval process usually is as follows:
  - a. Grantees must follow the instructions in the DWS issued plan guidelines.
  - b. Grantees must submit their plans to DWS by the specified due date.
  - c. DWS has 30 days to review the plan.
  - d. DWS will either approve, conditionally approve, or disapprove the plan.

**B. ASSIGNMENT, SUBCONTRACT, DELEGATION OR TERMINATION.**

1. **Responsibility.** The grantee is responsible for any subgrants it awards.
2. **Written and Signed Agreement.** Any subcontract must be a written agreement signed by the grantee and subgrantee.
3. **Compliance Requirements.** The grantee must require its subgrantees to comply with all the requirements and provisions of this manual.
4. **Monitoring and Staff Training.** The grantee must establish appropriate training and monitoring procedures for ensuring each subgrantee's compliance with the provisions of the grant; applicable regulations; and DWS policies, procedures, and requirements.
5. **Modifications.** The grantee is responsible for developing procedures for modifying and terminating subgrants.

**C. MODIFICATIONS OF GRANTS.** The grantee must comply with the requirements of grant revision described below.

1. **Modifications.** A plan modification is usually due when the following occur:
  - a. The grant budget changes.
  - b. The grant timeframe/end date changes.



- c. Major alterations to plan activities occur, such as changes relating to the economy, demographics, employment, or other factors.
  - 2. **Due Dates.** Grantees must meet the due dates as stated in the plan guidelines.
  - 3. **Components.** The components and process for grant modifications are usually the same as for original program plans.
- D. TERMINATION OF GRANTS.** The grantee must comply with the requirements of grant revision described below.
- 1. **Termination of Funds to Grantees.** The following events may result in termination of funds in whole or in part to the grantee.
    - a. When DWS determines that it is necessary to protect the integrity of the grants to ensure the legal operation of the program.
    - b. When DWS determines that the grantee has inadequate administrative, program, or financial systems.
    - c. When the grantee substantially violates the grant Training Activity Plan or regulations and corrective action has not been taken.
    - d. When the grantee is not in compliance with plan objectives, modifications, additional conditions, or budget requirements.
    - e. When federal funds are not available.
    - f. When DOL directs the termination of funds.
    - g. When both parties agree to partial or complete termination.
  - 2. **Notification of Termination.** DWS will provide a prompt written notice to the grantee after determining that fund or grant termination will occur. The grantee will be provided an opportunity to appeal any termination action.
- E. APPEAL PROCEDURES.** The appeal procedures for grant activity will follow DWS guidelines.

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## V. WDA DESIGNATIONS AND AGREEMENT.

This chapter contains the requirements that govern the designation of WDAs and the establishment of local Workforce Investment Boards. All DWS grantees and subgrantees must have local written policies that require compliance with applicable portions of this chapter.

**A. DESIGNATION OF AREAS.** The state shall be divided into local workforce investment areas.

1. **Process.** The Governor shall designate local workforce investment areas within the state through consultation with the state board and local elected officials.
2. **Considerations.** The Governor shall consider the following in making designations of local areas: local and intermediate education agencies, post-secondary and vocational education agencies, labor market areas, distance for services, and resources of local areas that are available.

**B. AUTOMATIC DESIGNATION OF AREAS.** The Governor shall approve any request for designation as a local area for the following entities:

1. **Local Government.** Any unit of local government with a population of at least 500,000.
2. **Other Entity.** Rural concentrated employment programs that served as prior service delivery areas.

**C. TEMPORARY AND SUBSEQUENT DESIGNATION OF AREAS.** The Governor shall approve for temporary designation as a local area any unit of local government with a population of at least 200,000 that was a prior SDA if program and fiscal requirements are met.

1. **Duration.** A temporary designation shall be for not more than 2 years. The Governor may extend the designation until the end of the period covered by the state plan.
2. **Technical Assistance.** The DOL may provide the state with technical assistance in determining temporary designation of a local area.

**D. DESIGNATION OF AREAS UPON RECOMMENDATION OF STATE BOARD.** The Governor may approve any request for designation as a local area if the state board recommends the designation.

**E. PLANNING AND COOPERATION AMONG DESIGNATED AREAS.** The state may require that local boards participate in regional planning, information sharing, and coordination of services among local areas. Two or more states may also designate an interstate region.

**F. APPEALS.** A unit of local government that is not granted designation as a local area may submit an appeal to the state as described in the following paragraph.

Any unit of local government through its Chief Elected Official (CEO) or Chief Local Elected Officials (CLEO) may appeal a failure by the Governor and/or his/her designee to grant designation as a local Workforce Development Area as defined under Section 116 of the Workforce Investment Act (WIA, hereafter the Act) of 1998 by:

### **PROCEDURE**

Within thirty (30) days of notification that the request for designation was not approved, the CEO or CLEOs must file an Appeal with the Governor and/or his/her designee, the Chair of the Council on Workforce Investment (CWI.)

1. The Appeal shall provide the basis for challenging the failure by the Governor or the CWI to approve the designation request.
2. The Appeal must cite a failure by the Governor or his/her designee to properly consider the criteria enumerated clauses (i) - (v) of Section 116(a) (1)(B) of the Act.
3. The Governor or his/her designee, the Chair of the CWI, may refer the Appeal to an appropriate Committee of the CWI for review and a determination whether or not the criteria were or were not appropriately applied to the request for designation.
4. The Governor or his/her designee, the Chair of the CWI, shall issue a final decision of the designation request within fifteen days. The final decision, if unsatisfactory to the appealing parties, shall provide information on further appeal to the Secretary of the Department of Labor as provided in the Act, Section 116(a)(5).